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MAINE BAR RULES

LIST OF RULES

RULE 1. SCOPE OF RULES

(a) Jurisdiction. These rules govern the practice of law by attorneys within this State and the conduct of attorneys with respect to their professional activities and as officers of the Court. Any attorney admitted to, or engaging in, the practice of law in this State shall be subject to the Court's supervision and disciplinary jurisdiction and the provisions of these rules, including Maine Bar Rule 1(b). A lawyer admitted to practice in this State is subject to the Court's disciplinary authority, regardless where the lawyer's conduct occurs. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction where the lawyer is admitted for the same conduct. A justice or judge shall be subject to the provisions of these rules as to conduct relevant to that person's position as an attorney and as to conduct prior to becoming, or after ceasing to be, a Justice or Judge. There shall be coordination between the Board and the Committee on Judicial Responsibility and Disability in any investigations or proceedings concerning a Justice or Judge arising out of the same or related conduct in order to avoid unnecessary or inappropriate duplication of any such investigations or proceedings.

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) *Court Related Conduct*. For conduct in connection with a proceeding in a tribunal before which a lawyer has been admitted to practice (either generally or for purposes of that proceeding), including all preparatory and pretrial or prehearing activities required or authorized by statute, rule or custom of the tribunal, the rules to be applied shall be the rules of professional conduct of the tribunal or of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise or neither the tribunal nor the jurisdiction in which it sits have adopted rules of professional conduct applicable to the proceeding; and

(2) *Other Conduct*. For any other conduct.

(i) if the lawyer is licensed to practice only in this jurisdiction, the rules to be applied shall be the rules of this jurisdiction, and

(ii) if the lawyer is licensed to practice in this and another jurisdiction, the rules to be applied shall be the rules of the admitting jurisdiction in which the lawyer principally practices; provided, however, that if particular conduct clearly has its predominant effect in another jurisdiction in which the lawyer is licensed to practice, the rules of that jurisdiction shall be applied to that conduct.

(c) Amendment. The Board, the Grievance Commission, the Fee Arbitration Commission, the Professional Ethics Commission, or any 10 members of the Bar of this States may submit to the Court written suggestions or proposals for revision or amendment of these rules.

(d) Justices. Except where powers are expressly given to the full Court, or the context indicates clearly that the full Court alone is to have the power, the powers of the Court with respect to these rules may be exercised by a single justice of the Court, subject to appropriate review by the Law Court.

RULE 2. PURPOSE OF RULES

(a) General Construction. These rules are intended to provide appropriate standards for attorneys with respect to their practice of the profession of law, including, but not limited to their relationship with their clients, the general public, other members of the legal profession, the courts and other agencies of this State. A proceeding brought against an attorney under these rules shall be an inquiry to determine the fitness of an officer of the court to continue in that capacity. The purpose of such proceeding is not punishment but protection of the public and the courts from attorneys who by their

conduct have demonstrated that they are unable, or likely to be unable, to discharge properly their professional duties. Further, these rules are intended to provide for a just determination of complaints alleging misconduct on the part of attorneys, and misunderstandings between attorneys and their clients. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense, delay and inconvenience. Whenever the word "Court" appears herein, it shall mean the Supreme Judicial Court. Whenever the word "Board" appears herein, it shall mean the Board of Overseers of the Bar.

(b) Amendment. The Board, the Grievance Commission, the Fee Arbitration Commission, the Professional Ethics Commission, or any 10 members of the Bar of this State may submit to the Court written suggestions or proposals for revision or amendment of these rules.

(c) Grounds for Discipline. Each act or omission by an attorney, individually or in concert with any other person or persons, which violates any of these rules shall constitute misconduct and shall be grounds for appropriate discipline notwithstanding that the act or omission did not occur in the course of an attorney-client relationship or in connection with proceedings in court. The failure without good cause to comply with any rule, regulation or order of the Board or the Grievance Commission or to respond to any inquiry by the Board, the Grievance Commission or Bar Counsel shall constitute misconduct and shall be grounds for appropriate discipline.

(d) Types of Discipline. Discipline of attorneys may be: (1) by disbarment, suspension, or public reprimand by the Court; or (2) by public reprimand by the Board or by a panel of the Grievance Commission.

RULE 2-A. ASPIRATIONAL GOALS FOR LAWYER PROFESSIONALISM

(a) Aspirational Goals for Lawyer Advertising. A lawyer should ensure that any advertising that the lawyer communicates or causes to be communicated by publication, broadcast, or other media is informative to potential clients, is presented in an understandable and dignified fashion, and accurately portrays the serious purpose of legal services and our judicial system. When advertising, though not false or misleading, degenerates into undignified and unprofessional presentations, the public is not served, the reputation of the lawyer who advertises may suffer, and the public’s confidence in the legal profession and the judicial system may be harmed. Lawyers who advertise should recognize their obligation to advance the public’s confidence in the legal profession and our system of justice. In furtherance of these goals, lawyers who advertise should:

(1) Avoid statements, claims, or comparisons that cannot be objectively substantiated;

(2) Avoid representations that demean opposing parties, opposing lawyers, the judiciary, or others involved in the legal process;

(3) Avoid crass representations or dramatizations, hawkish spokespersons, slapstick routines, outlandish settings, unduly dramatic music, sensational sound effects, and unseemly slogans that undermine the serious purpose of legal services and the judicial system;

(4) Avoid representations to potential clients that suggest promises of results or will create unjustified expectations such as "guaranteed results" or "we get top dollar awards";

(5) Clearly identify the use of professional actors or other spokespersons who may not be providing the legal services advertised unless it is readily apparent from the context of the advertisement that the actor or spokesperson does not provide the advertised legal services (e.g., a radio advertisement in which the speaker does not purport to be the lawyer or a member of the firm);

(6) Avoid the use of simulated scenes, actors who portray lawyers, clients or participants in the judicial system, and dramatizations unless they are clearly identified as such;

(7) Avoid representations that suggest that the ingenuity or prior record of a lawyer, rather than the merits of the claim, are the principal factors likely to determine the outcome of the representation; and

(8) Avoid representations designed to appeal to greed, exploit the fears of potential clients, or promote a suggestion of violence.

These aspirational goals are intended to provide suggested objectives that all lawyers who engage in advertising their services should be encouraged to achieve in order that lawyer advertising may be more effective and reflect the professionalism of the legal community.

(b) Aspirational Goals for Public Interest Legal Service. A lawyer engaged in active practice in the State of Maine should render unpaid public interest legal service of a type and amount reasonable in all the circumstances. For purposes of this rule, "unpaid public interest legal service" means:

(1) The provision of professional services at no fee or a reduced fee to persons of limited means;

(2) Participation in a program under which free legal services to the indigent are provided by individual lawyers upon referral from a central agency;

(3) The provision of professional services at no fee or a reduced fee to charitable organizations that provide services or support for the indigent; or

(4) Service in activities for improving the law, the legal system, or the legal profession.

RULE 3. CODE OF PROFESSIONAL RESPONSIBILITY

3.1 Scope and Effect

(a) This Code shall be binding upon attorneys as provided in Rule 1(a). Violation of these rules shall be deemed to constitute conduct "unworthy of an attorney" for purposes of 4 M.R.S. § 851. Nothing in this Code is intended to limit or supersede any provision of law relating to the duties and obligations of attorneys or the consequences of a violation; and the prohibition of certain conduct in this Code is not to be interpreted as an approval of conduct not specifically mentioned.

(b) Although this Code is prospective in application, it may be considered as advisory by the Board of Overseers of the Bar and by the Grievance Commission in their disposition of disciplinary proceedings related to conduct occurring before its effective date.

3.2 Admission, Disclosure and Misconduct

(a) Unauthorized Practice.

(1) A lawyer shall not practice law in a jurisdiction where to do so would be in violation of law or court rule.

(2) A lawyer shall not aid any person, association, or corporation in the unauthorized practice of law.

(b) Misstatements on Admission.

(1) In connection with a lawyer's application for admission to the bar, a lawyer shall not make any statement which the lawyer knows or should know is false or misleading, nor shall the lawyer fail to disclose any fact or information which the lawyer knows or should know is material to such application.

(2) A lawyer shall not further the application for admission to the bar of another person known by the lawyer to be unqualified in respect to character, education, or other relevant attribute.

(c) Judicial Officers.

(1) A lawyer shall not make a false statement of fact, with knowledge that it is false or with reckless disregard as to its truth or falsity, concerning the qualifications or integrity of a judge or other adjudicatory officer in the court system or a candidate for election or appointment to office as a judge or other adjudicatory officer in the court system.

(2) A lawyer who is a candidate for appointment to judicial office or election as judge of probate shall comply with the applicable provisions of Canon 5 of the Maine Code of Judicial Conduct.

(d) Acts as a Public Official. A lawyer who holds public office shall not:

(1) Use that public position to influence, or attempt to influence, a court or other public body or official engaged in adjudicatory proceedings to act in favor of the lawyer, any partner or associate, or any lawyer affiliated with them, or of a client of any of them;

(2) Represent a client before an elected or appointed public body of which the lawyer is a member, or before any committee or subcommittee of that body. If a lawyer is required to decline representation by virtue of this paragraph, Rule 3.4(b)(3) imposes no disqualification upon the partners or associates of the lawyer or upon any other lawyer affiliated with the lawyer or the lawyer's firm, provided that full

disclosure of the relationship is made upon the record at or before the commencement of the representation.

(e) Disclosure of Misconduct by Other Lawyers.

(1) A lawyer possessing unprivileged knowledge of a violation of the Maine Bar Rules that raises a substantial question as to another lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall report such knowledge to the appropriate disciplinary or investigative authority.

(2) A lawyer possessing unprivileged knowledge of a violation of the Code of Judicial Conduct that raises a substantial question as to the fitness for judicial office of a judge or other adjudicatory officer of a court system shall report such knowledge to the appropriate disciplinary or investigative authority.

(3) Notwithstanding paragraphs (1) and (2) of this subdivision, a lawyer serving in any capacity in a peer assistance or substance abuse treatment program approved by the Board of Overseers of the Bar shall not report or disclose any knowledge or evidence concerning another lawyer obtained as a result of a communication made by that lawyer while seeking or receiving peer assistance or substance abuse treatment under such program without that lawyer's informed written consent. This provision is not violated by the report or disclosure of that lawyer's intent to commit a crime or the information necessary to prevent the crime or to avoid subjecting others to the risk of harm, or by any report or disclosure otherwise required by law or by order of court.

(f) Other Misconduct. A lawyer shall not:

(1) directly or indirectly violate, circumvent, or subvert any provision of the Maine Bar Rules;

(2) engage in illegal conduct that adversely reflects on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;

(3) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(4) engage in conduct that is prejudicial to the administration of justice.

(g) Restrictions on Right to Practice. A lawyer shall not participate in offering or making:

(1) a partnership or employment agreement that restricts the right of a lawyer to practice after termination of the relationship, except as a condition of the right to receive post-termination payments or other post-termination benefits; or

(2) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a controversy between private parties.

(h) Responsibilities Regarding Law-Related Services.

(1) A lawyer shall be subject to the Code of Professional Responsibility with respect to the provisions of law-related services, as defined in paragraph (2), if the law-related services are provided:

(i) by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients; or

(ii) by a separate entity controlled by the lawyer individually or with others if the lawyer fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services of the separate entity are not legal services and that the protections of the client-lawyer relationship do not exist.

(2) The term "law-related services" denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a non-lawyer.

3.3 Fees; Fee Arbitration; Fee Division

(a) Excessive Fees. A lawyer shall not enter into an agreement for, charge, or collect an illegal or excessive fee. A fee is excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. Factors to be considered as guides in determining the reasonableness of a fee include the following:

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment of the lawyer;

(3) The fee customarily charged in the locality for similar legal services;

(4) The responsibility assumed, the amount involved, and the results obtained;

(5) The time limitations imposed by the client or by the circumstances;

(6) The nature and length of the professional relationship with the client;

(7) The experience, reputation, and ability of the lawyer performing the services;

(8) Whether the fee is fixed or contingent; and

(9) The informed written consent of the client as to the fee agreement.

(b) Credit Cards. A lawyer may accept payment by credit card for legal services.

(c) Fee Arbitration. A lawyer admitted to practice in this State shall submit, upon the request of the client, the resolution of any fee dispute in accordance with Rule 9.

(d) Fee Division. A lawyer shall not divide a fee for legal services with another lawyer who is not a partner in or associate of the lawyer's law firm or office; unless:

(1) The client, after full disclosure, consents to employment of the other lawyer and to the terms for the division of the fees; and

(2) The total fee of the lawyers does not exceed reasonable compensation for all legal services they rendered to the client.

This subsection (d) does not prohibit payment to a former partner or associate pursuant to a separation or retirement agreement.

(e) Dividing Fees With Non-lawyers [Abrogated].

3.4 Identifying Commencement, Continuation, and Termination of Representation

(a) Disclosure of Interest, Commencement, and Termination: General Provisions.

(1) Disclosure of Interest. Before commencing any professional representation, a lawyer shall disclose to the prospective client any relationship or interest of the lawyer or of any partner, associate or affiliated lawyer that might reasonably give rise to a conflict of interest under these rules. A lawyer has a continuing duty to disclose to the client any information that, in light of circumstances arising after the commencement of representation, might reasonably give rise to such a conflict of interest.

(2) Commencement. Representation of a client shall be deemed to have commenced when the lawyer and the client, by conduct or communication, would each reasonably understand and agree that representation commences. Commencement of representation shall be judged by an objective, not a subjective, standard. It is the obligation of the attorney to clarify whether representation has commenced. If the client reasonably believes that representation has commenced and the attorney has failed to clarify that it has not, then representation shall have commenced.

(3) Termination. Representation of a client shall be deemed terminated upon the earlier of the following, provided that all conditions and terms of Rule 3.5 have been satisfied:

(i) A date expressly or implicitly stated in an oral or written statement by the client to the lawyer, terminating the representation;

(ii) A date expressly or implicitly communicated by the lawyer to the client, orally or in writing, sent to the client at the client's last known address, withdrawing from or terminating the representation; or

(iii) The completion of the services which were the subject of the representation.

Termination of representation does not relieve the lawyer of any obligation of confidentiality imposed by Rule 3.6(h) or of any other obligation imposed under these rules to prevent disclosure of information protected by that rule.

(4) Retention of Client Files. Upon termination of representation, a lawyer, or a lawyer’s successor, shall return to the client or retain and safeguard in a retrievable

format all information and data in the lawyer's possession to which the client is entitled. Unless information and data is returned to the client or as otherwise ordered by a court, the lawyer shall retain and safeguard such information and data for a minimum of eight (8) years, except for client records in the lawyer's possession that have intrinsic value in the particular version, such as original signed documents, which must be retained and safeguarded until such time as they are out of date and no longer of consequence. A lawyer may enter into a voluntary written agreement with the client for a different period. In retaining and disposing of files, a lawyer shall employ means consistent with all other duties under these rules, including the duty to preserve confidential client information.

(b) Conflict of Interest: General Provisions.

(1) *Basic Rule.* A lawyer shall not commence or continue representation of a client if the representation would involve a conflict of interest, except as permitted by this rule. Representation would involve a conflict of interest if there is a substantial risk that the lawyer's representation of one client would be materially and adversely affected by the lawyer's duties to another current client, to a former client, or to a third person, or by the lawyer's own interests.

(2) *Informed Consent.* Whether a client has given informed consent to representation, when required by this rule, shall be determined in light of the mental capacity of the client to give consent, the explanation of the advantages and risks involved provided by the lawyer seeking consent, the circumstances under which the explanation was provided and the consent obtained, the experience of the client in legal matters generally, and any other circumstances bearing on whether the client has made a reasoned and deliberate choice.

(3) *Imputed Disqualification.*

(i) Except as otherwise provided in these rules, if a lawyer is required to decline or withdraw from representation under these rules for reasons other than health, no partner or associate, and no lawyer affiliated with the lawyer or the lawyer's firm, may commence or continue such representation.

(ii) If a lawyer or law student affiliated both with a law school legal clinic and with one or more lawyers outside the clinic is required to decline representation of any client solely by virtue of this paragraph (3), this paragraph imposes no disqualification on any other lawyer or law student who would otherwise be

disqualified solely by reason of an affiliation with that individual, provided that the originally disqualified individual is screened from all participation in the matter at and outside the clinic and that full disclosure of the disqualifying circumstances and the screening measures is given to all affected parties.

(c) Conflict of Interest: Simultaneous Representation.

(1) *Representation Prohibited.* Notwithstanding the consent of each affected client, a lawyer may not simultaneously represent, or continue to represent, more than one client in the same matter or group of substantially related matters when the matter or matters are the subject of litigation or any other proceeding for dispute resolution and the clients are opposing parties.

(2) *Representation Permitted With Consent.* In all other cases, if a conflict of interest exists, a lawyer may not undertake or continue simultaneous representation of more than one client except with the informed consent of each affected client to representation of the others. Consent is required even though representation will not occur in the same matter or in substantially related matters. Simultaneous representation in the same matter or substantially related matters is undertaken subject to the following additional conditions:

(i) The lawyer must reasonably believe (A) that each client will be able to make adequately informed decisions, and (B) that a disinterested lawyer would conclude that the risk of inadequate representation is not substantial, considering any special circumstances affecting the lawyer's ability to provide adequate representation of each client, such as the fact that the clients may seek incompatible results or pursue mutually disadvantageous tactics, or that their adverse interests may outweigh their common interests.

(ii) While engaged in simultaneous representation, the lawyer shall consult with each client concerning the decisions to be made and the considerations relevant in making them, so that each client can make adequately informed decisions.

(iii) The lawyer shall terminate the simultaneous representation upon request of any client involved, or if any condition described in this paragraph (2) can no longer be met, and upon withdrawal shall cease to represent any of the clients in the matter or matters on which simultaneous representation was undertaken or in any substantially related matter, except with the consent of any clients who will no longer be represented.

(3) *Settling Similar Claims.* A lawyer who represents two or more clients shall not make or participate in the making of an aggregate settlement of the claims of or against those clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client has consented after being advised of the existence and nature of all the claims or pleas involved, and of the share of each person and the total amount of the settlement of a civil matter, or the participation of each person in the agreement in a criminal case.

(d) Conflict of Interest: Successive Representation.

(1) *Interests of Former Clients.*

(i) Except as permitted by this rule, a lawyer shall not commence representation adverse to a former client without that client's informed written consent if such new representation is substantially related to the subject matter of the former representation or may involve the use of confidential information obtained through such former representation.

(ii) When a lawyer becomes affiliated with a firm, the firm shall not accept or continue representation adverse to a former client of the lawyer, or the lawyer's previous law firm, without that client's informed written consent, if:

(A) Such representation involves the subject matter of former representation on which the lawyer personally worked; or

(B) The lawyer personally had acquired information protected by Rule 3.6(h) that is material to the new matter.

(iii) After a lawyer has terminated an affiliation with a firm, the firm shall not commence representation adverse to a former client represented by the formerly affiliated lawyer while affiliated with the firm without that client's informed written consent, if:

(A) The subject matter of the proposed representation is substantially related to the subject matter of the representation in which the formerly affiliated lawyer represented the client while affiliated with the firm; or

(B) Any lawyer remaining in the firm personally has information protected by Rule 3.6(h) that is material to the new matter.

(2) *Successive Government and Private Representation.*

(i) A lawyer shall not commence private representation in a matter in which the lawyer formerly represented the government of a state, or the United States, or any agency, entity, or political subdivision of the state or of the United States as client, or in which the lawyer participated personally and substantially as a public officer or employee, or when such private representation may involve the use of confidential information obtained through the former governmental representation or employment.

(ii) A lawyer shall not commence representation on behalf of the government of a state, or of the United States, or any agency, entity, or political subdivision of the state or of the United States, or participate as a public officer or employee, in a matter in which the lawyer participated personally and substantially on behalf of a former client or employer, or which may involve the use of confidential information obtained through such former representation, unless:

(A) Under applicable law, no one is or by lawful delegation may be authorized to act in the lawyer's stead in the matter, or

(B) Such new representation or participation is adverse to the interests of the former client or employer and the former client gives informed written consent.

(iii) If a lawyer is required to decline representation by virtue of subparagraph (i) of this paragraph, a disqualification imposed by Rule 3.4(b)(3)(i) may be waived by the informed written consent of the appropriate governmental officer or agency upon a showing that the lawyer required to decline representation will be screened from any participation in the matter and will be directly apportioned no part of the fees therefrom, and a finding that such waiver is not contrary to the public interest.

(iv) If a lawyer is required to decline representation or participation by virtue of subparagraph (ii) of this paragraph, Rule 3.4(b)(3)(i) imposes no disqualification on lawyers employed with the lawyer in a governmental agency unless the subsequent representation is adverse. If a lawyer is required to decline representation because a former client would not give the consent provided by subparagraph (ii)(B) of this paragraph, a disqualification imposed by Rule 3.4(b)(3)(i) may be waived by the

informed written consent of the former client. Alternatively, Rule 3.4(b)(3)(i) does not apply to lawyers employed in a governmental agency with the lawyer required to decline representation if that lawyer is screened from any participation in the matter and if written notice is given to the former client to enable the client to ascertain compliance with the provisions of this subparagraph.

(e) Conflict of Interest: Fiduciary or Other Legal Obligation to Another. Without the client's informed consent, a lawyer may not undertake or continue to represent a client in any matter with respect to which the lawyer has a fiduciary or other legal obligation to another person if the obligation presents a substantial risk of materially and adversely affecting the lawyer's representation of the client.

(f) Conflict of Interest: Lawyer's Own Interest.

(1) *General Rule.* Except with the informed written consent of the client, a lawyer shall not commence representation if there is a substantial risk that any financial interest or significant personal relationship of the lawyer will materially and adversely affect the lawyer's representation of the client.

(2) *Avoiding Adverse Interest.*

(i) A lawyer shall not knowingly acquire a property or pecuniary interest adverse to a client, or enter into any business transaction with a client, unless:

(A) The transaction and terms in which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted to the client in manner and terms which should have reasonably been understood by the client;

(B) The client is advised and given a reasonable opportunity to seek independent professional advice of counsel of the client's choice on the transaction; and

(C) The client consents in writing thereto.

(ii) A lawyer shall not directly or indirectly purchase property at a probate, foreclosure, or judicial sale in an action or proceeding in which the lawyer or any partner or associate appears as attorney for a party or is acting as executor, trustee, administrator, guardian, conservator, or other personal representative.

(iii) Prior to conclusion of all aspects of the matter giving rise to representation of a client, the lawyer shall not enter into any arrangement or understanding with a client or a prospective client by which the lawyer acquires an interest in publication rights with respect to the subject matter of the representation or proposed representation.

(iv) A lawyer shall not prepare an instrument giving the lawyer or a parent, child, sibling, or spouse of the lawyer any substantial gift from a client, including a testamentary gift, except where the client is related to the donee.

(v) A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice; nor shall a lawyer settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith. This rule shall not prevent a lawyer from settling or defending a malpractice claim.

(3) *Familial Relations.* A lawyer related to another lawyer as parent, child, sibling or spouse shall not, in the same or a substantially related matter, undertake or continue representation adverse to a person who the lawyer knows is represented by the related lawyer or a lawyer affiliated with that lawyer without the client's informed consent.

(4) *Exception to Imputed Disqualification.* If a lawyer is required to decline representation by virtue of a familial relationship under paragraph (3) of this subdivision or any other significant personal relationship under paragraph (1) of this subdivision, Rule 3.4(b)(3)(i) imposes no disqualification upon the partners or associates of the lawyer or upon any other lawyer affiliated with the lawyer or the lawyer's firm.

(g) Other Restrictions.

(1) *When Lawyer May Be Called as Witness.*

(i) A lawyer shall not commence representation in contemplated or pending litigation if the lawyer knows, or should know, that the lawyer is likely or ought to be called as a witness. This rule does not apply where the predictable testimony will relate solely to uncontested matters or to legal services furnished by the lawyer, or where the distinctive value of the lawyer in the particular case would make denial a substantial hardship on the client.

(ii) A lawyer may commence representation in contemplated or pending litigation if another lawyer in the lawyer's firm is likely or ought to be called as a witness, unless such representation is precluded by subdivisions (b), (c), (d), (e), or (f) of this rule.

(2) *Prior Judicial Activity.*

(i) A lawyer shall not commence representation in a matter in which the lawyer participated personally and substantially as a judge or judicial law clerk. A lawyer shall not commence representation in a matter in which the lawyer participated personally and substantially as a nonjudicial adjudicative officer, arbitrator (other than a party's chosen member of a multi-member panel), or law clerk to such a person, unless all parties to the proceeding give informed consent.

(ii) If a lawyer is required to decline representation by virtue of this paragraph, Rule 3.4(b)(3)(i) imposes no disqualification upon the partners or associates of the lawyer or upon any other lawyer affiliated with the lawyer or the lawyer's firm, provided that the lawyer required to decline representation is screened from any participation in the matter and will be directly apportioned no part of the fees therefrom, and full disclosure of the circumstances and the measures taken to screen the lawyer required to decline representation is given to all affected parties.

(3) *Non-payment of Prior Lawyer.* A lawyer shall not refuse to commence or continue representation on the ground that the client's prior lawyer has not been paid.

(4) *Other Violations.* A lawyer may not commence or continue representation that the lawyer knows or should know would lead to a violation of other provisions of these rules.

(h) Mediation. A lawyer may act as mediator for multiple parties in any matter, whether or not their interests are opposing or adverse and whether or not they are represented by independent counsel, subject to the following conditions:

(1) The lawyer must clearly inform the parties of the nature and limits of the lawyer's role as mediator and should disclose any interest or relationship likely to affect the lawyer's impartiality or that might create an appearance of partiality or bias. The parties must consent to the arrangement unless they are in mediation pursuant to a legal mandate.

(2) The role of mediator does not create a lawyer-client relationship with any of the parties and does not constitute representation of any of them. The lawyer shall not attempt to advance the interests of any of the parties at the expense of any other party.

(3) While acting as mediator, the lawyer may not represent any of the parties in court or in the matter under mediation or any related matter. The lawyer must reasonably believe that the mediation can be undertaken impartially and without improper effect on any other responsibilities that the lawyer may have to any of the parties.

(4) The lawyer may draft a settlement agreement or instrument reflecting the parties' resolution of the matter but must advise and encourage any party represented by independent counsel to consult with that counsel, and any unrepresented party to seek independent legal advice, before executing it.

(5) The lawyer shall withdraw as mediator if any of the parties so requests, or if any of the conditions stated in this subdivision (h) is no longer satisfied. Upon withdrawal, or upon conclusion of the mediation, the lawyer shall not represent any of the parties in the matter that was the subject of the mediation, or in any related matter.

(6) The lawyer shall not use any conduct, discussions, or statements made by any party in the course of the mediation to the disadvantage of any party to the mediation or, without the informed consent of the parties, to the advantage of the lawyer or a third person.

(7) If a lawyer is required to decline representation by virtue of this paragraph, Rule 3.4(b)(3)(i) imposes no disqualification upon the partners or associates of the lawyer or upon any other lawyer affiliated with the lawyer or the lawyer's firm, provided that the lawyer required to decline representation is screened from any participation in the matter and will be directly apportioned no part of the fees therefrom, and full disclosure of the circumstances and the measures taken to screen the lawyer required to decline representation is given to all affected parties.

(i) Limited Representation. A lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client provides informed consent after consultation. If, after consultation, the client consents in writing (the general form of which is attached to these Rules), an attorney may enter a limited appearance on behalf of an otherwise unrepresented party involved in a court

proceeding. A lawyer who signs a complaint, counterclaim, cross-claim or any amendment thereto which is filed with the court, may not thereafter limit representation as provided in this rule.

(j) Non-Profit and Court-Annexed Limited Legal Service Programs. A lawyer who, under the auspices of a non-profit organization or a court-annexed program, provides limited representation to a client without expectation of either the lawyer or the client that the lawyer will provide continuing representation in the matter is subject to the requirements of Rules 3.4(a)-(e) only if the lawyer knows that the representation of the client involves a conflict of interest.

[The 2001 Advisory Note provides significant explanation of the rule changes to accomplish limited representation. They are included at this point to clarify application of the rule. The Advisory Notes are not part of the rule.]

Advisory Notes--2001

Both lawyer and client have authority and responsibility to determine the objectives and means of representation. The scope of services to be provided by a lawyer may be limited by agreement with the client. In situations where the lawyer will not be providing limited representation in court, the limited representation agreement need not be in writing, but must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law and the client's needs in order to handle a common and typically uncomplicated legal problem, the lawyer and the client may agree that the lawyer's services will be limited to a brief telephone consultation or office visit. Such a limitation, however, will not be reasonable if the time allotted was not sufficient to yield advice upon which the client can rely. Although an agreement for limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. A lawyer's advice may be based upon the scope of the representation agreed upon by the lawyer and client, and the client's representation of the facts.

The reasons a writing memorializing the agreement is not required in all contexts include (by way of example) the problem non-profit and court annexed legal services programs face in securing such a writing from their clients, and the time entering into the agreement takes in proportion to the time consumed by the limited representation itself. Nevertheless, to the extent a writing may be obtained, it is a better practice to do so for both the lawyer and the client.

In situations involving limited representation in court of an otherwise unrepresented party, a written memorandum of the scope of representation is required. A lawyer providing limited representation in court proceedings should include in the consultation with the client an explanation of the risks and benefits of the limited representation. The general form of the agreement is attached to the Code of Professional Responsibility.

Limited representation may not be provided by a lawyer who signs a complaint, counterclaim, cross-claim or any amendment thereto, which is filed with the court.

Legal service organizations, courts, and various non-profit organizations have established programs through which lawyers provide limited legal services--typically advice--that will assist persons with limited means to address their legal problems without further representation by a lawyer. In these programs, such as legal advice hotlines, advice-only clinics, lawyer for the day programs in criminal or civil matters, or unrepresented party counseling programs, an attorney-client relationship is established, but there is no expectation that the lawyer representation of the client will continue beyond the limited consultation. It is the purpose of this Rule to provide guidance to lawyers about their professional responsibilities when serving a client in this capacity.

Because a lawyer who is representing a client in the circumstances addressed by this Rule is not able to check systematically for conflicts of interest, paragraph (j) only requires compliance with Rules 3.4(a)-(e) if the lawyer knows, based on reasonable recollection and information provided by the client in the ordinary course of the consultation, that the representation presents a conflict of interest. A conflict of interest that would otherwise be imputed to a lawyer because of the lawyer association with a firm will not preclude the lawyer from representing a client in a limited services program. Nor will the lawyer participation in such a program preclude the lawyer's firm from undertaking or continuing the representation of clients with interests adverse to a client being represented under the program's auspices.

LIMITED REPRESENTATION AGREEMENT

(Used in conjunction with Rule 3.4(i) the following form shall be sufficient to satisfy the rule. The authorization of this form shall not prevent the use of other forms consistent with this rule.)

To Be Executed in Duplicate

Date: , 20

1. The client, , retains the attorney, , to perform limited legal services in the following matter: v. .

2. The client seeks the following services from the attorney (indicate by writing "yes" or "no"):

a. Legal advice: office visits, telephone calls, fax, mail, e-mail;
b. Advice about availability of alternative means to resolving the dispute, including mediation and arbitration;
c. Evaluation of client self-diagnosis of the case and advising client about legal rights and responsibilities;
d. Guidance and procedural information for filing or serving documents;
e. Review pleadings and other documents prepared by client;
f. Suggest documents to be prepared;
g. Draft pleadings, motions, and other documents;
h. Factual investigation: contacting witnesses, public record searches, in-depth interview of client;
i. Assistance with computer support programs;
j. Legal research and analysis;
k. Evaluate settlement options;
l. Discovery: interrogatories, depositions, requests for document production;
m. Planning for negotiations;
n. Planning for court appearances;
o. Standby telephone assistance during negotiations or settlement conferences;
p. Referring client to expert witnesses, special masters, or other counsel;
q. Counseling client about an appeal;
r. Procedural assistance with an appeal and assisting with substantive legal argument in an appeal;
s. Provide preventive planning and/or schedule legal check-ups:
t. Other:

3. The client shall pay the attorney for those limited services as follows:

a. Hourly Fee:

The current hourly fee charged by the attorney or the attorney's law firm for services under this agreement are as follows:

i.	Attorney:
ii.	Associate:
iii.	Paralegal:
iv.	Law Clerk:

Unless a different fee arrangement is established in clause b.) of this paragraph, the hourly fee shall be payable at the time of the service. Time will be charged in increments of one-tenth of an hour, rounded off for each particular activity to the nearest one-tenth of an hour.

b. Payment from Deposit:

For a continuing consulting role, client will pay to attorney a deposit of $, to be received by attorney on or before , and to be applied against attorney fees and costs incurred by client. This amount will be deposited by attorney in attorney trust account. Client authorizes attorney to withdraw funds from the trust account to pay attorney fees and costs as they are incurred by client. The deposit is refundable. If, at the termination of services under this agreement, the total amount incurred by client for attorney fees and costs is less than the amount of the deposit, the difference will be refunded to client. Any balance due shall be paid within thirty days of the termination of services.

c. Costs:

Client shall pay attorney out-of-pocket costs incurred in connection with this agreement, including long distance telephone and fax costs, photocopy expense and postage. All costs payable to third parties in connection with client case, including filing fees, investigation fees, deposition fees, and the like shall be paid directly by client. Attorney shall not advance costs to third parties on client behalf.

4. The client understands that the attorney will exercise his or her best judgment while performing the limited legal services set out above, but also recognizes:

a. the attorney is not promising any particular outcome.

b. the attorney has not made any independent investigation of the facts and is relying entirely on the client limited disclosure of the facts given the duration of the limited services provided, and

c. the attorney has no further obligation to the client after completing the above described limited legal services unless and until both attorney and client enter into another written representation agreement.

5. If any dispute between client and attorney arises under this agreement concerning the payment of fees, the client and attorney shall submit the dispute for fee arbitration in accordance with Rule 9(e)-(k) of the Maine Bar Rules. This arbitration shall be binding upon both parties to this agreement.

WE HAVE EACH READ THE ABOVE AGREEMENT BEFORE SIGNING IT.

Signature of attorney

Signature of client

* * * * * * * * * * * * * * * * *

3.5 Withdrawal From Employment

(a) General Rules.

(1) If permission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a proceeding before that tribunal without its permission.

(2) A lawyer shall not withdraw from employment until the lawyer has taken reasonable steps to avoid foreseeable prejudice to the rights of the lawyer's client, including giving due notice to the client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.

(3) Withdrawal shall not be conditioned upon payment by the client for services to date; and a lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned.

(4) It shall not be a violation of 3.5(a) to cease or limit representation in accordance with Rule 3.4(i).

(b) Mandatory Withdrawal.

(1) If a lawyer knows, or should know, that the lawyer or a lawyer in the lawyer's firm is likely or ought to be called as a witness in litigation concerning the subject matter of the lawyer's employment, the lawyer and the lawyer's firm shall withdraw from representation at the trial unless the court otherwise orders. This rule does not apply to situations in which the lawyer would not be precluded from accepting employment under Rule 3.4(g)(1)(ii).

(2) A lawyer representing a client before a tribunal, with its permission if required by its rules, shall withdraw from employment, and a lawyer representing a client in other matters shall withdraw from employment if:

(i) The lawyer knows, or should know, that the client is bringing the legal action, conducting the defense, or asserting a position in the litigation, or is otherwise having steps taken, merely for the purpose of harassing or maliciously injuring any person;

(ii) The lawyer knows, or should know, that the lawyer's continued employment will result in violation of these Rules;

(iii) The lawyer's mental or physical condition renders it unreasonably difficult for the lawyer to carry out the employment effectively; or

(iv) The lawyer is discharged by the client.

(c) Permissive Withdrawal. Other than as provided in these rules a lawyer may not request permission to withdraw in matters pending before a tribunal, and the lawyer may not withdraw in other matters, unless:

(1) The client insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law;

(2) The client personally seeks to pursue an illegal course of conduct;

(3) The client insists that the lawyer pursue a course of conduct that is illegal or that is prohibited under these rules;

(4) The client by other conduct renders it unreasonably difficult for the lawyer to carry out the lawyer's responsibilities;

(5) The client insists that the lawyer engage in conduct that is contrary to the judgment and advice of the lawyer even though not prohibited by these rules;

(6) The client deliberately disregards an agreement with, or obligation to, the lawyer as to expenses or fees;

(7) The lawyer's continued employment is likely to result in a violation of these rules;

(8) The lawyer's inability to work with the client or with co-counsel indicates that the best interests of the client likely will be served by withdrawal;

(9) The lawyer's mental or physical condition renders it difficult for the lawyer to carry out the employment effectively;

(10) The client knowingly and freely assents to termination of the employment; or

(11) The lawyer believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.

3.6 Conduct During Representation

(a) Standards of Care and Judgment. A lawyer must employ reasonable care and skill and apply the lawyer's best judgment in the performance of professional services. A lawyer shall be punctual in all professional commitments. A lawyer shall take reasonable measures to keep the client informed on the status of the client's affairs. A lawyer shall not

(1) handle a legal matter which the lawyer knows or should know that the lawyer is not competent to handle, without first associating with another lawyer who is competent to handle it;

(2) handle a legal matter without preparation adequate in the circumstances, provided that, with respect to the provision of limited representation, the lawyer may rely on the representations of the client and the preparation shall be adequate within the scope of the limited representation; or

(3) neglect a legal matter entrusted to the lawyer.

(b) **[abrogated]**

(c) Threatening Prosecution. A lawyer shall not present, or threaten to present, criminal, administrative, or disciplinary charges solely to obtain an advantage in a civil matter.

(d) Advising Violation of Law. A lawyer shall not counsel or assist a client in the violation of any law, rule, or order of a tribunal; but a lawyer may take appropriate steps in good faith to test the validity of any law, rule, or order of a tribunal.

(e) Preserving Identity of Funds and Property.

(1) All funds of clients paid to a lawyer or law firm, other than retainers and advances for costs and expenses, shall be deposited in one or more identifiable accounts maintained in the state in which the law office is situated at a financial institution authorized to do business in such state. No funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(i) Funds reasonably sufficient to pay institutional service charges may be deposited therein; and

(ii) Funds belonging in part to a client and in part presently or potentially to a lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive the funds is disputed by the client; in that event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(iii) For purposes of this rule, “retainer” means a fee paid to an attorney for professional services that is earned upon the attorney’s engagement. A retainer payment is the property of the attorney when received. “Retainer” does not include a payment by a client as an advance payment that will be credited toward fees for professional services as the attorney earns the fees.

(2) A lawyer shall:

(i) Promptly notify a client of the receipt of the client's funds, securities, or other properties;

(ii) Identify and label securities and properties of a client promptly upon receipt and place them in a safe-deposit box or other place of safekeeping as soon as practicable;

(iii) Maintain complete records of all funds, securities and other properties of a client coming into possession of the lawyer and render prompt and appropriate accounts to the client regarding them; and

(iv) Promptly pay or deliver to the client, as requested by the client, the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

(3) Unless the client directs otherwise, when a lawyer or law firm reasonably expects that client funds will earn interest, or dividends for the client in excess of the costs incurred to secure such income, such funds shall be deposited in a client trust account that may be either

(i) A separate trust account for the particular client or client's matter on which the earnings net of any transaction costs or other account-related charges will be paid or credited to the client; or

(ii) A pooled, trust account with subaccounting which will provide for computation of earnings accrued on each client's funds and the payment thereon, net of any transaction costs or other account-related charges to the client.

(4) All funds of any client held by the lawyer or law firm that are small in amount or held for a short period of time so that they cannot earn interest or dividends for the client in excess of the costs incurred to secure such income shall be deposited in an

Interest on Lawyer's Trust Account (IOLTA) account and shall be subject to the following conditions:

(i) The financial institution in which the account is established shall be authorized to do business in Maine, shall be insured by the Federal Deposit Insurance Corporation or National Credit Union Share Insurance Fund, and shall be an eligible institution selected by the lawyer in the exercise of ordinary prudence. "Eligible Institution" is one determined by the Maine Bar Foundation in accordance with Rule 6(a)(2), (3) and (4);

(ii) Funds deposited in the account shall be subject to withdrawal upon request and without delay;

(iii) Within 30 days after the opening of any IOLTA account that is to be maintained hereunder, the lawyer or law firm shall file with the Board of Overseers of the Bar an order directing the financial institution to remit any net interest or dividends that may accrue on the account to the Maine Bar Foundation, a nonprofit corporation incorporated under the laws of the State of Maine that has in force a determination letter from the Internal Revenue Service that it qualifies as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1954 as from time to time amended;

(iv) No interest or dividends on the account shall be paid to the lawyer or law firm, and the lawyer or law firm shall not receive any direct or indirect pecuniary benefit by reason of the remittance of interest in accordance with subparagraph (iii); and

(v) The determination of whether funds are small in amount or held for a short period of time so that they cannot earn interest or dividends for the client in excess of the costs incurred to secure such income, shall rest in the sound judgment of the lawyer or law firm. No lawyer shall be charged with an ethical impropriety or other breach of professional conduct based on the good faith exercise of such judgment.

(5) A lawyer or a law firm, holding funds of the United States government that by law may not earn interest shall deposit those funds in one or more insured, non-interest bearing accounts, whether or not the lawyer or firm has made the election provided by this paragraph for other client funds.

(6) If the circumstances on which a lawyer or law firm has based a determination to deposit client funds in an account under paragraph (4) of this subdivision change, so

that interest or dividends in excess of costs may reasonably be expected to be earned on such funds, the lawyer or law firm shall transfer the principal amount originally deposited to the appropriate account established under paragraph (3) of this subdivision.

(7) For purposes of this rule, the term "interest or dividends in excess of costs" means the net of interest or dividends earned on a particular amount of one client's funds over the administrative costs allocable to that amount. In estimating the gross amount of interest or dividends to be earned, the lawyer or law firm shall consider the principal amount involved; available interest or dividend rates; and the time the funds are likely to be held, taking into account the likelihood of delay in any relevant proceeding or transaction.

(8) For purposes of this rule, the term "administrative costs" means that portion of the following costs properly allocable to a particular amount of one client's funds paid to a lawyer or law firm:

(i) Financial institutional service charges for opening, maintaining, or closing an account, or accounting for the deposit and withdrawal of funds and payment of interest or dividends.

(ii) Reasonable charges of the lawyer or law firm for opening, maintaining or closing an account; accounting for the deposit and withdrawal of funds and payment of interest or dividends; and obtaining information and preparing or forwarding any returns or reports that may be required by a revenue taxing agency as to the interest or dividends earned on a client's funds.

(f) Communicating With Adverse Party. During the course of representation of a client, a lawyer shall not communicate or cause another to communicate on the subject of the representation with a party the lawyer knows to be represented by another lawyer in that matter unless the lawyer has the prior consent of the lawyer representing such other party or is authorized by law to do so. An otherwise unrepresented party to whom limited representation is being provided or has been provided in accordance with Rule 3.4(i) is considered to be unrepresented for purposes of this rule, except to the extent the limited representation attorney provides other counsel written notice of a time period within which other counsel shall communicate only with the limited representation attorney.

(g) Implying Improper Influence. A lawyer shall not state or imply that the lawyer is able to influence improperly, or upon irrelevant grounds, any tribunal, legislative body, or public official.

(h) Confidentiality of Information.

(1) Except as permitted by these rules, or when authorized in order to carry out the representation, or as required by law or by order of the court, a lawyer shall not, without informed consent, knowingly disclose or use information (except information generally known) that:

(i) Is protected by the attorney-client privilege in any jurisdiction relevant to the representation;

(ii) Is information gained in the course of representation of a client or former client for which that client or former client has requested confidential treatment;

(iii) Is information gained in the course of representation of the client or former client and the disclosure of which would be detrimental to a material interest of the client or former client; or

(iv) Is information received from a prospective client, the disclosure of which would be detrimental to a material interest of that prospective client, when the information is provided under circumstances in which the prospective client has a reasonable expectation that the information will not be disclosed.

(2) A lawyer shall exercise reasonable care to prevent lawyers and non-lawyers employed or retained by or associated with the lawyer from improperly disclosing or using information protected by paragraph (1) of this subdivision.

(3) This Rule is not violated by the disclosure or use of information described in paragraph (1) of this subdivision that the lawyer reasonably believes is necessary to the defense of the lawyer, the lawyer's partners, employees, or associates against an accusation of wrongful conduct presented to the Board or any tribunal.

(4) A lawyer may disclose information gained in the course of representation of a former client or client, or learned from a prospective client, to the extent that the lawyer reasonably believes disclosure is necessary:

(i) To prevent the commission of a criminal act that is likely to result in death or bodily harm to another person; or

(ii) To avoid the furthering of a criminal act.

(5) A lawyer who receives information clearly establishing that a client or former client has, during the representation, perpetrated a fraud upon any person or tribunal shall promptly call upon the client or former client to rectify the same; and if the client or former client refuses or is unable to do so, the lawyer shall reveal the fraud to the affected person or tribunal, except when the information is protected as a privileged communication. If a person other than a client or former client has perpetrated a fraud upon a tribunal, the lawyer shall promptly reveal the fraud to the tribunal.

(i) Avoiding Misreliance. If a lawyer knows or should know that the lawyer's advice or opinion may be communicated to a person other than the lawyer's client, the lawyer shall take reasonable steps to prevent that person from believing that the lawyer represents that person's interests as well as the interests of the client.

(j) Client With Diminished Mental Capacity.

(1) When a client's ability to make adequately considered decisions in connection with the representation is impaired because of mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(2) When a lawyer reasonably believes that a normal client-lawyer relationship cannot be maintained as provided in paragraph (1) of this subdivision because the client lacks sufficient understanding or capacity to communicate or to make adequately considered decisions in connection with the representation, the lawyer may consult family members, adult protective agencies, or other individuals or entities that have the ability to take action to protect the client, provided that

(i) The lawyer reasonably believes that the client is at risk of physical harm or substantial financial loss;

(ii) The lawyer does not consult any individual or entity that the lawyer knows or reasonably should know has an interest adverse to an interest of the client; and

(iii) The lawyer consults only those individuals or entities reasonably necessary to protect the client's interests.

(3) In consulting individuals and entities as provided in paragraph (2) of this subdivision, the lawyer may disclose confidences and secrets of the client to the extent that disclosure is necessary to protect the client's interests.

3.7 Conduct During Litigation

(a) Improper Legal Action. A lawyer shall not file a suit, assert a position, delay a trial, or take other action on behalf of a client when the lawyer knows, or should know, that such action would merely serve to harass or maliciously injure another.

(b) Improper Concealment, Statement or Evidence. A lawyer shall not knowingly make a false statement, conceal information legally required to be revealed, or participate in the creation or preservation of false evidence.

(c) Interest in Litigation. A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) Assert a lien granted by law against the proceeds of such action or litigation to secure the lawyer's fee or expenses. This paragraph does not authorize an attorney to assert a lien on a client's file in order to secure payment of a fee. The assertion of such a lien (if any exists) is improper; and

(2) Contract with a client for a reasonable contingent fee as provided in Rule 8.

(d) Financial Assistance. While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial assistance to the client, except that a lawyer may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and expenses of obtaining and presenting evidence.

(e) Adversary Conduct.

(1) In appearing in a professional capacity before a tribunal, a lawyer shall:

(i) Employ, for the purpose of maintaining the causes confided to the lawyer, such means only as are consistent with truth, and shall not seek to mislead the judge, jury, or tribunal by any artifice or false statement of fact or law;

(ii) Disclose, unless privileged or irrelevant, the identities of all the clients the lawyer represents.

(2) In appearing in a professional capacity before a tribunal, a lawyer shall not:

(i) Intentionally misquote to a judge, jury, or tribunal the language of a book, statute, or decision or, with knowledge of its invalidity and without disclosing such knowledge, cite as authority, a decision that has been overruled or a statute that has been repealed or declared unconstitutional;

(ii) State or allude to any matter that the lawyer has no reasonable basis to believe is relevant to the case or will not be supported by admissible evidence;

(iii) Ask any question that the lawyer has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person;

(iv) Assert personal knowledge of the facts at issue, except when testifying as a witness;

(v) Assert a personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused; but a lawyer may argue, on the lawyer's analysis of the evidence, for any position or conclusion with respect to the matters stated therein; or

(vi) Engage in undignified or discourteous conduct that is degrading to a tribunal.

(f) Communication With Jurors.

(1) At no time shall a lawyer connected with the trial of a case communicate extrajudicially, directly or indirectly, with a juror, with anyone the lawyer knows to be a member of the pool from which the jury will be selected, or with any member of such person's family.

(2) After discharge of a juror from further jury service, a lawyer may ask or answer questions and make comments to the former juror provided the questions or comments are not intended to harass or embarrass the juror or influence the juror's action in future jury service.

(3) A lawyer shall reveal promptly to the court knowledge of improper conduct by a juror or member of the jury pool, or by another toward a juror or member of the jury pool, or a member of the juror's or jury-pool member's family.

(g) Contact With Witnesses. A lawyer shall not:

(1) Suppress any evidence that the lawyer or a client has a legal obligation to reveal or produce;

(2) Advise, or directly or indirectly cause, a person to hide or to leave the jurisdiction of a tribunal for the purpose of making that person unavailable as a witness therein; or

(3) Directly or indirectly pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of the testimony of the witness or the outcome of the case; but unless prohibited by law, a lawyer may advance, guarantee, or acquiesce in payment of:

(i) Expenses reasonably incurred by a witness in attending or testifying;

(ii) Reasonable compensation to a witness for his loss of time in attending or testifying; and

(iii) A reasonable fee for the professional services of an expert witness.

(h) Contact With Officials.

(1) A lawyer shall not directly or indirectly give or lend anything of value to a judge, official, or employee of a tribunal unless the personal or family relationship between the lawyer and the judge, official, or employee is such that gifts are customarily given and exchanged. This paragraph does not preclude contributions to election campaigns of public officers.

(2) In the absence of opposing counsel, a lawyer shall not directly or indirectly communicate with or argue before a judge or tribunal upon the merits of a contested matter pending before such judge or tribunal, except in open court; nor shall the lawyer, without furnishing opposing counsel with a copy thereof, address a written communication to a judge or tribunal concerning the merits of a contested matter pending before such judge or tribunal. This paragraph does not preclude communications permitted by rule of court. For purposes of this paragraph the term "opposing counsel" includes a party who has no counsel.

(i) Duty of Public Prosecutor.

(1) A lawyer shall not institute or cause to be instituted criminal charges when the lawyer knows, or it is obvious, that the charges are not supported by probable cause.

(2) A public prosecutor or other government lawyer in criminal litigation shall make timely disclosure to counsel for the defendant, or to a defendant without counsel, of the existence of evidence that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment.

(3) A public prosecutor or other government lawyer shall not conduct a civil or criminal case against any person whom the lawyer represents or has represented as a client.

(4) A public prosecutor or other government lawyer shall not conduct a civil or criminal case against any person relative to a matter in which the lawyer represents or has represented the complaining witness.

(j) Extra-Judicial Publicity. A lawyer involved in the prosecution or defense of a criminal matter or in representing a party to a civil cause shall not make or participate in making any extra-judicial statement which poses a substantial danger of interference with the administration of justice.

3.8 Advertising Fields of Practice

A lawyer may communicate, publicly and otherwise, truthful statements identifying fields of law in which the lawyer practices, refrains from practice, concentrates, or specializes, or to which the lawyer's practice is limited. In doing so a lawyer may use phrases and titles recognized by established custom, such as "Trademark Attorney" or

"Admiralty Lawyer". A lawyer shall not represent publicly or imply that the lawyer has recognized, designated or certified expertise in a field of law, except that:

(a) Practice Before Agencies and Courts. A lawyer may identify the government agencies and courts before which the lawyer is admitted to practice, using appropriate language such as "member, U.S. Supreme Court bar", or customary phrases such as "Patent Attorney."

(b) Other Permissible Communications. A lawyer may communicate truthful statements reporting certification or other recognition of expertise conferred by a named organization that has been approved by the Maine Board of Overseers of the Bar as a certifying organization for the field of law to which the statement pertains.

3.9 Publicity, Advertising and Solicitation

(a) False Advertising Forbidden. A lawyer shall not, on behalf of the lawyer or any affiliated lawyer, knowingly use, or assist or participate in the use of, any form of public communication containing a false, fraudulent, misleading, or deceptive statement or claim. A public communication is any communication, through mass media, direct mail, or other means including professional cards, announcements, letterheads, office signs, and similar accoutrements of a law practice.

(b) False Advertising Defined. Without limitation, a false, fraudulent, misleading, or deceptive statement or claim includes a statement or claim that:

(1) Contains a material misrepresentation of fact or law;

(2) Omits to state any material fact necessary to make the statement, in the light of all circumstances, not misleading;

(3) Is intended or is likely to create an unjustified expectation;

(4) Violates Rule 3.8;

(5) Is intended, or is likely, to convey the impression that the lawyer is in a position to influence improperly any court, tribunal, or other public body or official; or

(6) Contains a representation or implication that is likely to cause an ordinary prudent person to misunderstand or be deceived thereby, or fails to contain

reasonable warnings or disclaimers necessary to make the representation or implication not deceptive.

(c) Other Improper Public Communication. A lawyer shall not, on behalf of the lawyer or any affiliated lawyer, knowingly use, or assist, or participate in the use of, any form of public communication that:

(1) Is intended or is likely to result in a legal action being taken, or a legal position being asserted, merely to harass or maliciously injure another; or

(2) Appeals primarily to fear, greed, desire for revenge, or similar emotion.

(d) Paid Publicity. A lawyer shall not compensate or give anything of value to a representative of the press, radio, television, or other communication medium in anticipation of, or in return for, professional publicity in a news item. A paid advertisement must be identified as such unless it is apparent from the context that it is a paid advertisement. If a paid advertisement is communicated to the public by use of radio or television, it shall be prerecorded, approved for broadcast by the lawyer, and the prerecording as approved shall be retained by the lawyer for two years. If a public communication is transmitted through the mails, a copy of such communication shall be retained by the lawyer for two years following the mailing.

(e) Multi-jurisdictional Disclosure. A multi-jurisdictional partnership shall disclose, in all public communications containing the names of affiliated lawyers, jurisdictional limitations of those lawyers not licensed to practice in the jurisdiction in which the communication is published.

(f) Recommendation or Solicitation of Employment.

(1) A lawyer shall not solicit employment on behalf of the lawyer or any affiliated lawyer through any form of personal contact:

(i) By using any statement, claim, or device that would violate this rule if part of a public communication;

(ii) By using any form of duress or intimidation, unwarranted suggestions or promises of benefits, or engaging in deceptive, vexatious, or harassing conduct; or

(iii) When the circumstances create an appreciable risk of undue influence by the lawyer or ill-considered action by the person being solicited. Without limitation, such circumstances will be deemed to exist as to the person solicited if that person is in the custody of a law enforcement agency or under treatment in a hospital, convalescent facility, or nursing home, or if that person's mental faculties are impaired in any way or for any reason. Notwithstanding the foregoing, such circumstances shall be deemed not to exist when a lawyer is discussing employment with any person who has, without solicitation by the lawyer or anyone acting for the lawyer, sought the lawyer's advice regarding employment of a lawyer.

(2) A lawyer shall not compensate, or give anything of value to, a person or organization to recommend or secure employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except that a lawyer may pay for public communication permitted by these rules and may pay the usual and reasonable fees or dues charged by a lawyer referral service operated, sponsored, or approved by a bar association.

(3) A lawyer shall not knowingly assist or authorize any other person or organization to engage in conduct that would violate this rule if engaged in by the lawyer personally, nor shall a lawyer accept employment when the lawyer knows, or it is obvious, that the person who seeks the lawyer's services does so as a result of conduct prohibited under this rule.

(g) Suggestion of Need for Legal Services. A lawyer who has given unsolicited advice to a person that the person should obtain counsel or take legal action shall not accept employment resulting from that advice if:

(1) The advice embodies or implies a statement or claim that is false, fraudulent, misleading, or deceptive within the meaning of Rule 3.9(b), or that violates the regulations contained in Rule 3.9(c);

(2) The advice involves the use by the lawyer of any form of duress or intimidation, unwarranted suggestions or promises of benefits, or deceptive, vexatious, or harassing conduct; or

(3) The advice is given under circumstances that create an appreciable risk of undue influence by the lawyer or ill-considered action by the person being advised, within the meaning of Rule 3.9(f)(1)(iii).

(h) Definition. As used in Rule 3.9, "affiliated lawyer" refers to any kind of affiliation for the practice of law and includes, without limitation, partners and associates of a lawyer, lawyers employing a lawyer, lawyers "of counsel" to a lawyer or law firm, lawyers or law firms toward whom a lawyer is "of counsel," and lawyers with whom a lawyer shares offices or any expense or facility of a law practice, whether or not a partnership or any other affiliation exists.

3.11 [Reserved].

3.12 Professional Independence of a Lawyer

(a) Dividing Fees With Non-lawyers. A lawyer or law firm shall not share legal fees with a non-lawyer, except that:

(1) An agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons.

(2) A lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer.

(3) A lawyer or law firm may include non-lawyer employees in a retirement or compensation plan, even though the plan is based in whole or in part upon a profit-sharing arrangement; provided that the amounts paid to non-lawyer employees in addition to fixed salary 1) are not based upon business brought to the law firm by such employees, 2) are not based upon services performed by such employees in a particular case, and 3) do not constitute the greater part of the total remuneration of such employees.

(b) Avoiding Influence by Others. A person who recommends, employs, or pays a lawyer to render legal services for another shall not be permitted by the lawyer to direct or regulate the lawyer's professional judgment in rendering such legal services unless direction or regulation occurs in the course of supervision by another lawyer who participates in the attorney-client relationship with the supervised lawyer.

(c) Partnership With Non-lawyers. A lawyer shall not form a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law.

(d) Co-ownership With Non-lawyers. A lawyer shall not practice law with or in the form of a corporation, limited liability company or other legal entity authorized to practice law for a profit, if:

(1) a non-lawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a non-lawyer is a corporate director or officer thereof; or

(3) a non-lawyer has the right to direct or control the professional judgment of a lawyer.

3.13 Responsibility for Compliance With the Maine Bar Rules.

(a) Responsibilities of a Partner or Supervisory Lawyer.

(1) A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Code of Professional Responsibility.

(2) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Code of Professional Responsibility.

(3) A lawyer shall be responsible for another lawyer's violation of the Code of Professional Responsibility if:

(i) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(ii) the lawyer is a partner in the law firm, in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(b) Responsibilities of a Subordinate Lawyer.

(1) A lawyer is bound by the Code of Professional Responsibility notwithstanding that the lawyer acted at the direction of another person.

(2) A subordinate lawyer does not violate the Code of Professional Responsibility if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

(c) Responsibilities Regarding Non-lawyer Assistants. With respect to a non-lawyer employed or retained by or associated with a lawyer:

(1) A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(2) A lawyer having direct supervisory authority over the non-lawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(3) A lawyer shall be responsible for conduct of such a person that would be a violation of the Code of Professional Responsibility if engaged in by a lawyer if:

(i) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(ii) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

3.14 Sale or Cessation of Law Practice

A lawyer or law firm may sell or purchase a law practice, including goodwill, if the selling attorney or each attorney in the selling firm has retired, become disabled or has died; or the selling attorney or each attorney in the selling firm has ceased to engage in the private practice of law in the State of Maine. The purchaser, who must be registered with the Board as an active member of the Bar of the State of Maine, assumes the obligations of an attorney to the client or clients whose files are transferred. The parties to the sale and purchase must comply with the other

applicable provisions of these rules, and must satisfy the conditions of this rule. The estate of a deceased lawyer may be a seller.

(a) If the seller is or was a solo practitioner, then the entire law practice must be sold as a single unit. If the seller is or was a law firm, then the entire practice of the firm must be sold as a single unit. The entire law practice, for purposes of this rule, shall mean all client files, for open and closed engagements, excepting only those cases in which a conflict of interest is present or may arise.

(b) Written notice shall be given the Board of Overseers of the Bar and to each of the seller's clients (meaning those with whom the attorney then has open engagements) regarding:

(1) The proposed sale, including the name of the purchasing attorney or the names of the attorneys who practice within the purchasing firm;

(2) The terms of any proposed change in the fee arrangement authorized by paragraph (d);

(3) The client's right to retain other counsel or to take possession of the client's file; and

(4) That the client's consent to the transfer of the client's file to and representation by the purchaser will be presumed if the client does not take any action or does not otherwise object within ninety days of receipt of the notice.

If a client cannot be given notice, the transfer of the client's file and assumption of representation of that client may occur only after entry of an order by a single justice of the Maine Supreme Judicial Court which shall not issue without the Board of Overseers of the Bar having been given notice and an opportunity to be heard. The seller may disclose to the Board and the court, *in camera*, information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of the client's file and of representation of the client.

(c) Further notice shall be given by publication in a newspaper of general circulation in each county in which seller has engaged in the practice of law, at least thirty days before the anticipated transfer of files. Such notice shall include the anticipated date of sale and identification of the purchasing lawyer or firm.

(d) The fees charged clients shall not be increased by the purchasing lawyer or firm by reason of the sale. The purchaser may, however, refuse to undertake the representation unless the client consents to pay the purchaser fees at a rate not exceeding the fees charged by the purchaser for rendering substantially similar services prior to the initiation of the purchase negotiations.

(e) Admission to or withdrawal from a partnership or professional corporation, retirement plans, and similar arrangements for a sale limited to the tangible assets of a law practice is not sale or purchase for the purposes of this Rule 3.14.

3.15. Definitions

(a) “Law Firm.” Wherever used in these rules, unless the context requires a narrower meaning, "law firm" shall mean any legal entity or group associated by contract, however designated, that in fact provides legal services through lawyers, but shall not include a government agency or lawyers organized as a department within a government agency.

(b) “Partner”. Wherever used in these rules, unless the context requires a narrower meaning, "partner" shall mean a member of a group, however designated, that exercises ultimate authority over the activities of a legal entity or contractual association through which legal services are provided by lawyers.

(c) “Client.” Wherever used in these rules, “client” refers to a person, public officer, or corporation, association or other organization or entity, either public or private, who is being rendered professional legal services by a lawyer.

(d) “Prospective Client.” Wherever used in these rules, “prospective client” refers to a person, public officer, or corporation, association or other organization or entity, either public or private, who consults a lawyer with the view of obtaining professional legal services from the lawyer.

(e) “Former Client.” Wherever used in these rules, “former client” refers to a client for whom the lawyer previously rendered and then terminated professional legal services, and for whom the lawyer is not currently rendering any such legal services.

RULE 4. BOARD OF OVERSEERS OF THE BAR

(a) The Board of Overseers of the Bar. The Court shall appoint a Board of Overseers of the Bar to act, as provided by these rules, with respect to the conduct and discipline of attorneys. The Board shall be composed of 9 members to be selected by the Court, of whom 3 shall be lay persons and 6 shall be members of the Bar of this State. The lay members shall be appointed by the Court on the recommendation of the Governor. The Court shall from time to time designate one member of the Board as Chair and another as Vice Chair. The Vice Chair shall perform the duties of the Chair in the absence or incapacity of the Chair.

(b) Term. Initial members of the Board shall serve as follows: three (one lay person and two attorneys) shall be appointed for a term of 3 years; three (one lay person and two attorneys) for a term of 2 years; and three (one lay person and two attorneys) for a term of 1 year. Appointments thereafter shall be for terms of 3 years. No member shall be appointed to more than 2 consecutive full terms but a member appointed for less than a full term (originally or to fill a vacancy) may serve 2 full terms in addition to such part of a full term, and a former member shall again be eligible for appointment after a lapse of 1 year.

(c) Board Action and Quorum. Five members shall constitute a quorum for any meeting of the Board. The Board may act through the concurrence or vote of a majority of the members present at a duly constituted meeting. After reasonable notice to all members and with the consent of all participating members, a meeting may be duly constituted and action taken by means of a conference telephone or similar communications equipment enabling all members participating in the meeting to hear one another. Meetings of the Board of Overseers shall be open to the public, except those portions of the meetings wherein the Board (i) consults with counsel pertaining to contemplated or pending litigation, proceedings pending before the Grievance Commission, the Fee Arbitration Commission, and/or the Court; (ii) considers matters pertaining to the personnel of the Board and/or appointments to the Board or its components; and/or (iii) considers other matters made confidential or private by these rules, court order, or law.

(d) **Responsibilities and Authority.** The Board of Overseers of the Bar:

(1) shall, subject to the Court's approval, appoint and compensate Bar Counsel and the Executive Director;

(2) may appoint and compensate such deputy, assistant and special counsel and administrative and secretarial personnel as are needed to assist the Board in the performance of its duties;

(3) shall, consistent with Rule 6, establish procedures for and supervise the registration of all attorneys admitted to the practice of law in this State;

(4) shall compile and keep current a register for the Court of all persons admitted as members of the Bar of the State of Maine, and a record of the death, or termination or suspension of the right of any such person to practice law in this State;

(5) shall recommend to the Court the amount of the annual fee to be assessed pursuant to Rule 10;

(6) shall enforce compliance by attorneys with these Rules and the procedures and regulations adopted thereunder;

(7) may investigate, through the office of the Bar Counsel, and act with respect to the conduct of any attorney within the Court's jurisdiction upon the complaint or request of the Court, upon its own motion or upon the complaint of any person, including any justice or judge. In furtherance hereof:

(A) The Board may conduct hearings on formal charges of misconduct and make findings and issue its recommendations with respect thereto; and

(B) The Chair of the Board, or in the absence of the Chair, the Vice Chair, may designate two attorney members and one lay member to sit and act for the Board in the exercise of its authority hereunder, notwithstanding the provisions of subdivision (c) of this Rule 4;

(8) may issue public reprimands to attorneys for misconduct and, in any case where suspension or disbarment of an attorney is to be sought or recommended, shall file an information with the Court;

(9) shall appoint at least 12 persons, not less than one-third of whom shall be lay persons and the balance (as close to two-thirds as may be) of whom shall be members of the Bar of this State, as a Grievance Commission, to conduct such hearings and to perform such other functions as may be provided for under these rules or assigned by the Board with reference to charges of misconduct;

(10) may refer to the Grievance Commission any grievance other than one involving a member of the Grievance Commission or a grievance which the Board, in its judgment, deems to be a matter of grave public concern;

(11) [Abrogated.]

(12) shall appoint at least 15 persons, not less than one third of whom shall be lay persons and the balance (as close to two-thirds as may be) of whom shall be attorneys who are admitted to the Bar of this State, as a Fee Arbitration Commission, to perform such functions as may be assigned to it by the Board with reference to fee disputes, consistent with Rule 9 hereof. In addition, the Board may appoint any number of lay alternate members to the Fee Arbitration Commission;

(13) may consult with State and local Bar Associations and their officers concerning any appointments which it is herein authorized to make;

(14) may, subject to the Court's approval, lease, purchase, improve or acquire equipment, supplies, office space, and real property, and make contracts and arrangements for the performance of administrative and other services required or appropriate in the performance of the Board's duties.

(14)(A) may, subject to the Court's approval, finance the acquisition and improvement of real property and, in furtherance thereof, execute and deliver promissory notes to evidence the Board's indebtedness and mortgages and related financing documents to secure the Board's debts. The Board Chair, or such other designee of the Board, in that capacity, at the time of such lease, purchase, or financing shall have the authority to execute any such documents on behalf of the Board.

(15) may invest or direct the investment of the fees or any portion thereof, received pursuant to these rules, and may cause funds to be deposited in any federally insured bank or financial institution in this State, provided, however, that the Board shall have no obligation to cause such fees or any portion thereof to be invested;

(16) shall prepare and file with the Court for approval in May of each year its budget for the next fiscal year, with its recommendation as to the amount of annual fee to be assessed pursuant to Rule 10;

(17) shall have the responsibility for establishing procedures for, and supervising, a continuous study of the Bar in its relation to the public and the courts for the purpose of making recommendations to the Court with respect to changes, additions or deletions in these rules or for such other action by the Court as it may deem advisable in its superintendence of the Bar. In furtherance hereof, the Board may establish or designate such commissions, agencies, or persons, to assist its study as it shall deem advisable;

(18) may adopt and publish its own rules of procedure and such regulations as are not inconsistent with these rules;

(19) may perform other acts necessary or proper in the performance of the Board's duties under these rules;

(20) shall appoint 8 attorneys who are admitted to the Bar of this State, as a Professional Ethics Commission, to perform such functions as may be assigned to it by the Board consistent with Rule 11;

(21) shall adopt the fiscal year used by the Judicial Department;

(22) shall, subject to the Court's approval, adopt personnel and financial policies and procedures, including accounting controls, purchasing, expense vouchering, and capital equipment inventories;

(23) shall, by April 1st of each year, furnish to the State Tax Assessor the names, addresses, social security or federal identification numbers, and other identifying information as the State Tax Assessor, may by rule require, of all attorneys registered with the Board.

(24) Shall receive and act on applications of organizations for approval to recognize, designate or certify attorneys admitted to practice in the State of Maine as having expertise in one or more areas of law. In furtherance hereof:

(A) The Board shall by regulation provide a procedure for the submission of applications for approval by organizations desiring to certify expertise, or by one or more attorneys admitted to practice in this State who seek approval for such an organization. The Board shall approve an organization if it finds that the organization:

(i) Accepts and impartially decides on applications for certification from all lawyers licensed to practice in the jurisdictions served by the organization;

(ii) Applies to all applicants objective and consistent standards relevant to the determination of special competence in one or more particular fields of law;

(iii) Bases its decisions on an examination, investigation, or other procedures offering reasonable assurance of accuracy in ascertaining whether the standards have been met; and

(iv) Is governed or managed by attorneys possessed of expertise equivalent to the expertise certified or otherwise recognized by that organization.

(B) The Board may provide for the investigation of applications submitted to it under this paragraph by, or under the direction of, Bar Counsel and may invite public comment on any application.

(C) The Board may conduct hearings on applications for approval either as a committee of the whole or by delegation to three or more of its members.

(D) The Board may approve without further investigation an organization that has been approved by the American Bar Association (ABA), if the Board finds that the ABA has applied criteria similar to those set forth in subparagraph (A).

(E) The Board may at any time revoke its approval of any application upon finding that the organization no longer meets the requirements of subparagraph (A).

(e) Immunity. Members of the Board, its staff and its Commissions shall be immune from liability for any conduct in the course of their official duties under any provision of the Maine Bar Rules.

RULE 5. BAR COUNSEL

(a) Qualifications. Bar Counsel shall be admitted to the Bar of this State and a full-time employee of the Board. Bar Counsel shall not be otherwise engaged in the practice of law, directly or indirectly, while so employed. As used anywhere in the Bar Rules, the term Bar Counsel includes any Deputy Bar Counsel, Assistant Bar

Counsel or special counsel approved by the Court under Bar Rule 4(d)(1) for such appointment.

(b) Duties; Grievance.

(1) *Investigation.* Bar Counsel shall investigate all matters involving alleged misconduct by an attorney subject to these rules.

(2) *Disposition.* Bar Counsel shall dispose of all matters involving alleged misconduct by an attorney in accordance with these rules and such additional rules and regulations as may be issued by the Board.

(3) *Appeal.* Bar Counsel may appeal to the Board from action of the Grievance Commission if inconsistent with Bar Counsel's recommendations.

(4) *Prosecution.* Bar Counsel shall prosecute all disciplinary proceedings before the Grievance Commission, the Board, and the Court.

(5) *Hearings.* Bar Counsel shall appear at hearings conducted with respect to motions for reinstatement by suspended or disbarred attorneys, with full rights to participate as a party.

(c) Duties; Other. Bar Counsel shall perform such administrative and professional services as the Board may request on behalf of itself, the Fee Arbitration Commission or the Professional Ethics Commission.

(d) Records. Bar Counsel shall permanently retain all orders, reports and letters imposing any sanction against an attorney and all reports on decisions issued after any disciplinary hearing, as well as all fee awards and dismissal orders in matters docketed with the Fee Arbitration Commission, and all petitions, orders, decisions or reports concerning petitions for reinstatement. Initial complaint filings shall be retained for 10 years from the final disposition date in all disbarment, suspension or resignation matters, and for 6 years from the final disposition date in all other grievance complaints heard or reviewed that resulted in any other disposition except dismissal. Petitions for fee disputes that proceed to hearing with an award being issued by the Fee Arbitration Commission shall be retained for 6 years from the date of the award. After 2 years from the final disposition date, Bar Counsel shall expunge all file documents or other evidence of the existence of grievance complaints dismissed pursuant to either Rule 7.1(c), 7.1(d)(3), 7.1(e)(3)(A), 7.2(b)(5) or fee

petitions dismissed pursuant to Rule 9. Such expungement of records shall also occur 1 year after the date of the death of an attorney having any record of grievance complaints. Notwithstanding any required expungement of documents, the Board shall permanently maintain a summary of all docketed complaint matters processed by Bar Counsel containing the name of the complainant and respondent-attorney, the disposition, and the respective dates the matter was opened and closed. After a complaint file has been so expunged, any Board response to an inquiry from the complainant or respondent will be that the file contents have been expunged and only non-substantive docketing and disposition information has been retained; any Board response to any other inquiry about the matter shall state that there is no public record of such matter.

(e) Delegation. Bar Counsel may delegate any duties or functions to any duly appointed deputy or assistant counsel acting under Bar Counsel's general supervision.

(f) Matters Referred by the Attorney General. Bar Counsel shall keep the Attorney General informed of the result of all investigations, and any action taken thereon, relating to any matter referred to either the Board or Bar Counsel by the Attorney General.

(g) Immunity. Bar Counsel, any Deputy Bar Counsel, Assistant Bar Counsel, special counsel and the Board’s staff shall be immune from liability for any conduct in the course of their official duties under any provision of the Maine Bar Rules.

RULE 6. REGISTRATION; LIST OF TRUST ACCOUNTS

(a) Required Filings.

(1) *Registration Statement.* Every attorney admitted to practice in this State, except attorneys who have notified the Board that they are members of the armed forces of the United States who are on active duty outside of the state of Maine, shall upon admission and each year thereafter, file with the Board a registration statement setting forth the attorney's current residence and office addresses, Social Security or federal identification number, and such other identifying information as the State Tax Assessor may by rule require; the date of the attorney's admission to the Bar of the Court; the facts concerning the attorney's admission to practice in any other jurisdiction including each federal court and administrative body where admitted; and such other information as the Court or the Board may direct. The statement shall

disclose whether the attorney is in good standing in each jurisdiction to which admitted and, if the attorney is not in good standing in any jurisdiction, it shall contain an explanation of the circumstances. In addition to such registration statement, every attorney shall file a supplemental statement of any change in the information previously submitted within 30 days of such change. Within 30 days of the receipt of a registration statement or supplement thereto filed by an attorney, the Board shall acknowledge receipt thereof in order to enable the attorney on request to demonstrate compliance with the requirement of this rule. Registration statements shall be filed and payment of requisite fees imposed by Rule 10 shall be made on or before August 31 by every attorney admitted to practice in this state except that if the following July is fewer than four months from the date of admission, the next filing shall be the second July following the date of admission. With the registration statement every attorney admitted to practice in this state shall submit a signed written report documenting compliance with the continuing legal education requirements of Rule 12(a) by providing the Annual Report statement required by Rule 12(b)(1). Registration statements, Annual Report statements, and payments postmarked after August 31 will be considered late causing a $25.00 surcharge per statement to be assessed upon and payable by the attorney.

Justices of the Maine Supreme Judicial Court, Justices of the Maine Superior Court, Judges of the Maine District Court, Maine Family Law Magistrates, Judges and Magistrates of the United States District Court of Maine, Maine Judges of the United States Court of Appeals for the First Circuit, and Judges of the United States Bankruptcy Court District of Maine shall not be required to file a registration statement or pay an annual fee during their tenure in office, but they shall remain on the roll of attorneys in judicial status, and may retire in judicial status or resume active practice upon completion of their tenure in office by filing a registration statement and paying the annual fee required for the year in which active practice is resumed.

(2) *IOLTA Accounts*. Every lawyer admitted to practice in this State shall annually certify to the Board of Overseers of the Bar in connection with the annual renewal of the lawyer's registration, that:

(A) To the lawyer's knowledge after reasonable investigation

(1) the lawyer or the lawyer's law firm maintains at least one IOLTA account, and

(2) the lawyer has taken reasonable steps to ensure that all client funds are held in client trust accounts meeting the requirements of these Rules, or

(B) That the lawyer is exempt from maintaining an IOLTA or other trust account because the lawyer:

(1) is not engaged in the private practice of law;

(2) does not have an office within the State of Maine;

(3) is (i) a judge or other judicial officer employed full time by the United States Government, the State of Maine or another state government, (ii) on active duty with the armed services, or (iii) employed full time as an attorney by a local, state, or federal government, and is not otherwise engaged in the private practice of law;

(4) is counsel for a corporation or non-profit organization or a teacher or professor employed by an educational institution, and is not otherwise engaged in the private practice of law;

(5) has been exempted by an order of the Court which is cited in the certification; or

(6) holds no client funds other than retainers or advances for costs and expenses.

(3) *IOLTA Account Defined*. An IOLTA account is a pooled trust account earning interest or dividends at an eligible institution in which a lawyer or law firm holds funds on behalf of client(s), which funds are small in amount or held for a short period of time such that they cannot earn interest or dividends for the client in excess of the costs incurred to secure such income and the account is:

(A) an interest-bearing checking or share draft account;

(B) a money market account with or tied to check-writing;

(C) an account whose funds are invested solely in repurchase agreements; or

(D) an account whose funds are invested solely in qualified money market funds.

A "qualified money market fund" is an open-end investment company registered under the Investment Company Act of 1940 that is regulated as a money market fund

under Rule 270.2a-7 thereof (or any successor regulation) and that, at the time of the investment, has total assets of at least $250,000,000, substantially all of which are invested in U.S. Government Securities. A "repurchase agreement" is a daily overnight repurchase agreement which must be fully collateralized by U.S. Government Securities and may be established only with a bank or other depository institution that is deemed to be "well capitalized" or "adequately capitalized" under applicable regulations of the Federal Deposit Insurance Corporation and National Credit Union Share Insurance Fund. U.S. Government Securities, for the purpose of this section, include securities of Government Sponsored Entities, including but not limited to Federal National Mortgage Association Securities, Government National Mortgage Association Securities, and Federal Home Loan Mortgage Corporation Securities.

(4) *Account Qualifications.* An IOLTA account must meet all of the following conditions:

(A) the account is held in an eligible institution which is required to:

(i) remit the interest and dividends on this account, net of any allowable reasonable fees, at least quarterly to the Maine Bar Foundation;

(ii) transmit with each remittance a report on a form approved by the Maine Bar Foundation that shall identify each lawyer or law firm for whom the remittance is sent, the amount of remittance attributable to each IOLTA account, the rate and type of interest and dividends applied, the amount of interest and dividends, the amount and type of account-related charges deducted, if any, and the average account balance for the period in which the report is made; and

(iii) transmit to the depositing lawyer or law firm a report in accordance with normal procedures for reporting to its depositors.

(B) the account meets the requirements of paragraph 3 above as a client trust account.

(C)(1) An "Eligible Institution" for IOLTA accounts is a bank, trust company, savings bank, credit union, or savings and loan association authorized by federal or state law to do business in Maine, the deposits of which are insured by an agency of the federal government, and which has been designated by the Maine Bar Foundation as meeting the conditions of this subsection (C).

(2) To qualify as an eligible institution, the institution must pay on IOLTA accounts interest or dividends no less than the highest interest rate or dividend generally available from the institution to its non-IOLTA customers on accounts having similar minimum balances and other eligibility qualifications. Interest or dividends and fees shall be calculated in accordance with the eligible institution's standard practice. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA customers, an institution may consider in addition to the balance in the IOLTA account, factors customarily considered by the institution when setting interest rates or dividends for its non-IOLTA customers, provided that such factors do not discriminate between IOLTA accounts and other accounts and that these factors do not include the fact that the account is an IOLTA account. The eligible institution shall calculate interest and dividends in accordance with its standard practice for non-IOLTA customers. The eligible institution may choose to pay the higher interest rate or dividend on an IOLTA account in lieu of establishing it as a higher rate product. Nothing contained in this Rule will be deemed to prohibit an institution from paying a higher interest rate or dividend on IOLTA accounts than required by this Rule or from electing to waive any fees and service charges on an IOLTA account. Lawyers may only maintain IOLTA accounts at eligible institutions which meet this Rule's requirements, as determined from time to time by the Maine Bar Foundation.

(3) Eligible institutions may comply with the rate requirements of this Rule by electing to pay an amount on funds which would otherwise qualify for the options noted above, equal to 65% of the Federal Funds Target Rate in effect on July 1 of each year, which rate remains in effect for twelve months, and which amount is deemed to be already net of allowable reasonable fees. The Federal Funds Target Rate as of January 1, 2008, shall be in effect until July 1, 2008.

(4) "Allowable reasonable fees" for IOLTA accounts are per check charges, per deposit charges, sweep fees, a fee in lieu of a minimum balance, federal deposit or share insurance fees, and a reasonable IOLTA account administrative or maintenance fee. All other fees are the responsibility of, and may be charged to the lawyer maintaining the IOLTA account. Fees or charges in excess of the interest or dividends earned on the account for any month or quarter shall not be taken from interest or dividends earned on other IOLTA accounts or from the principal of the amount.

(5) *Maine Bar Foundation Actions.*

(A) The Maine Bar Foundation shall publish annually a list of eligible institutions that may hold IOLTA accounts.

(B) By March 1 of each year, beginning in 2009, the Maine Bar Foundation shall complete a financial report of the IOLTA funds received and distributed by it for the previous calendar year. The financial report shall be conducted according to generally accepted accounting principles and shall include indication of the purposes for which IOLTA funds have been expended in the previous year. Copies of the financial report shall be provided to the Court.

(6) *Receipt of Voluntary Contributions*. As part of its notification to attorneys to file annual registration statements, the Board may invite attorneys to make a voluntary contribution to the Campaign for Justice to assist in the funding of legal services for low income individuals. The Board may also provide a means for making the voluntary contribution at the same time that the annual fee is paid and is authorized to utilize its administrative staff and facilities to receive these voluntary contributions and forward them to the Campaign for Justice.

(b) Failure to File Registration Statement, to File State Tax Returns, to Comply With a Support Order, to File an Unemployment Tax Return, to Pay an Unemployment Tax Assessment or to Comply With an Award of the Fee Arbitration Commission.

(1) *Failure to File Registration Statement*. Any attorney who fails to file the registration statement or any supplement thereto in accordance with the requirements of (a) above by August 31 is automatically suspended. Notice of the suspension shall be given by the Board by registered or certified mail, and return receipt requested, addressed to the office or home address last known to the Board. Such suspension for failure to file the statement or supplement thereto shall not be effective until thirty (30) days after the date of mailing the notice thereof. The failure to file shall not be considered a violation of the Code of Professional Responsibility per se, and the suspension for failure to file shall not constitute the imposition of discipline. An attorney who, after the date of the mailing of such notice of suspension but before the effective date of such suspension, files the statement or any supplement thereto as required by subdivision (a) of this rule shall be deemed to be in compliance with this rule and shall not be suspended for failure to file such statement or supplement or certificate; otherwise the attorney shall be subject to Maine Bar Rules 7.3(i)(2) and

(j). An attorney aggrieved as a result of a suspension under this paragraph may apply to the Board Chair for summary relief for good cause shown.

(2) *Failure to File State Tax Returns*. Whenever, pursuant to section 175 of Title 36 of the Maine Revised Statutes, the State Tax Assessor notifies the Board of the Assessor's finalized determination to prevent renewal or reissuance of a "license or certificate of authority" for an attorney to practice law, the Board shall refuse to process any registration statement filed by such attorney after such notification from the State Tax Assessor and such attorney is automatically suspended. The failure to file such a state tax return or to pay any tax liability due as referred to in such notification from the State Tax Assessor shall not be considered a violation of the Code of Professional Responsibility per se and the suspension due to the reported failure to file such return or to pay any overdue tax liability shall not constitute the imposition of discipline. Notice of the receipt of such notification from the State Tax Assessor of such finalized determination and of the suspension shall be given by the Board to the attorney by registered or certified mail, and return receipt requested, addressed to the office or home address last known to the Board of Overseers of the Bar. Such suspension for reported failure to file the state tax return or to pay any overdue tax liability shall not be effective until thirty (30) days after the date of mailing the notice thereof. An attorney who, after the date of the mailing of such notice of notification and suspension but before the effective date of such suspension, files with the Board a certificate issued by the State Tax Assessor that the attorney is currently in good standing with respect to any and all returns and tax liability due shall be deemed to be in compliance with this rule and shall not be suspended for failure to file such state tax returns or to pay any overdue tax liability; otherwise the attorney shall be subject to Maine Bar Rules 7.3(i)(2) and (j). An attorney aggrieved as a result of a suspension under this paragraph may apply to the Board Chair for summary relief for good cause shown.

(3) *Failure to File List of Trust Accounts*. Any attorney practicing alone who fails to file a list of trust accounts in accordance with paragraph (2) of subdivision (a) of this rule, or any attorney who is a member of a law firm that fails to file such a list, is automatically suspended in the manner and on the terms and conditions provided in paragraph (1) of this subdivision for failure to file a registration statement.

(4) *Failure to Comply with a Support Order*. Whenever, pursuant to section 2201 of Title 19-A of the Maine Revised Statutes, the Department of Human Services certifies in writing to the Board that, in compliance with the statutory procedure: A) the Department has determined that an attorney is in noncompliance with a support

order: and B) the attorney has failed to appeal the Department's decision; or C) a final judgment has been entered against the attorney on the attorney's petition for judicial review, the Board shall refuse to process any registration statement filed by such an attorney after such notification from the Department, and such attorney is automatically suspended. Certification by the Department of an attorney's failure to comply with a support order shall not constitute violation of the Code of Professional Conduct per se, although the Board may institute separate proceedings to determine whether discipline is appropriate. Suspension after certification of noncompliance by the Department shall not constitute the imposition of discipline. Notice of the receipt of such certification from the Department and of the suspension shall be given by the Board to the attorney by registered or certified mail, and return receipt requested, addressed to the office or home address last known to the Board of Overseers of the Bar. Such suspension for reported failure to comply with a support order shall not be effective until thirty (30) days after the date of mailing the notice thereof. An attorney who, after the date of mailing of such notice of certification and suspension but before the effective date of such suspension, files with the Board written confirmation by the Department of compliance with the support order shall not be suspended for failure to comply; otherwise the attorney shall be subject to Maine Bar Rules 7.3(i)(2) & (j). An attorney aggrieved as a result of a suspension under this paragraph may apply to the Board Chair for summary relief for good cause shown.

(5) *Failure to File an Unemployment Tax Return or to Pay an Unemployment Tax Assessment*. Whenever, pursuant to section 1232 of Title 26 of the Maine Revised Statutes, the State Commissioner of Labor or Director of Employment Security certifies in writing to the Board that: (1) the Commission has determined in compliance with the statutory procedure that an attorney is in noncompliance with the unemployment compensation statute, and (2) the attorney has either failed to pursue an appeal from the Commission's decision or a judgment has been entered against the attorney on the attorney's petition for judicial review; the Board shall refuse to process any registration statement filed by such an attorney after such notification from the Commission and such attorney is automatically suspended. Certification by the Commission of an attorney's failure to comply with the unemployment compensation statute shall not constitute violation of the Code of Professional Conduct per se, although the Board may institute separate proceedings to determine whether discipline is appropriate. Suspension after certification of noncompliance by the Commission shall not constitute the imposition of discipline. Notice of the receipt of such certification from the Commission and of the suspension shall be given by the Board to the attorney by registered or certified mail, and return receipt requested, addressed to the office or home address last known to the Board of Overseers of the

Bar. Such suspension for reported failure to comply with the unemployment compensation statute shall not be effective until thirty (30) days after the date of mailing the notice thereof. An attorney who, after the date of mailing of such notice of certification and suspension but before the effective date of such suspension, files with the Board written confirmation by the Commission of compliance with the statute shall not be suspended for failure to comply; otherwise the attorney shall be subject to Maine Bar Rules 7.3(i)(2) & (j). An attorney aggrieved as a result of a suspension under this paragraph may apply to the Board Chair for summary relief for good cause shown.

(6) *Failure to Comply With an Award of the Fee Arbitration Commission.* When a matter involving an award of a panel of the Fee Arbitration Commission is referred to Bar Counsel under Rule 9(i) because of the attorney's failure to make an awarded refund to the petitioner within 30 days of receipt of the arbitration award, the Board, upon request of Bar Counsel and after affording the attorney an opportunity to respond in writing, may refer the matter to the Court for appropriate disciplinary action.

(c) Notification of Discontinuance of the Practice of Law, Request for Reinstatement, and Arrearage Registration Payment.

(1) *Notification of Discontinuance of the Practice of Law*. Any Maine attorney not the subject of disciplinary investigation under Rule 7.1(d) or of disciplinary proceedings as authorized or pending under Rule 7.1(e) may advise the Board in writing of a desire to completely discontinue the practice of law in Maine and be placed on inactive status. Upon the filing of such notice, the attorney shall no longer be eligible to practice law in Maine or allowed in any manner to indicate or advertise an authority to so practice in Maine, but shall be required to file annual registration statements with the Board for three (3) years thereafter in order that the attorney can be located by the Board of Bar Counsel. During that three (3) year period the attorney shall remit to the Board an annual registration fee in an amount equal to one-half the fee required of a similarly situated active attorney under Rule 10. The attorney shall also comply with the provisions of Rule 7.3(i)(2).

(2) *Withdrawal from Maine practice*. Any Maine attorney currently registered in good standing under Rule 6(a) and not the subject of any investigation under Rule 7.1(c) or (d) or of any disciplinary proceedings under Rule 7.1(e), may provide written notice to the Board of withdrawal from Maine practice. Such notice shall include a current mailing address and telephone number of the attorney, and the

effective date of that withdrawal. The withdrawing attorney shall also comply with the provisions of Rule 7.3(i)(2), and shall not subsequently return to the practice of law in Maine without first complying with the requirements of subsection (c)(3) of this Rule and applicable portions of Maine Bar Admission Rule 10.

(3) *Request for Reinstatement*. Prior to resuming active practice in Maine, an inactive attorney or an attorney who has withdrawn from practice in Maine must petition the Board Chair and provide persuasive evidence of compliance with the factors as enumerated under Rule 7.3(j)(5)(A), (B), (D), (E) & (F).

(4) *Arrearage Registration Payment*. In addition to all other requirements, an inactive attorney or an attorney who has withdrawn from practice now seeking reinstatement shall remit to the Board a $ 125.00 reinstatement fee and an arrearage registration payment equal to the total fee that the attorney would have been obligated to pay the Board under Rule 10 had the attorney remained actively registered to practice in Maine during that period of inactive or withdrawn status, minus a credit for the total payment made by the attorney for the first three years of the inactive period but not more than $ 1,000.00.

(d) Emeritus Attorney Status.

(1) *Purpose.* To provide a licensing status to allow attorneys retired from the active practice of law to provide pro bono publico services to the indigent through recognized legal services organizations.

(2) *Application.* Any attorney who has discontinued the practice of law and who has given the notice required by Maine Bar Rule 6(c)(1) but who wishes to provide pro bono publico legal services without compensation or expectation of compensation shall advise the Board by filing an emeritus status statement indicating he or she will limit his or her active legal practice to providing pro bono publico legal services under the auspices of an approved legal service organization, as defined below. The emeritus status statement shall be signed by an authorized representative of the approved legal services organization under whose auspices the attorney will provide such legal services. Unless the Board of Overseers of the Bar objects within 30 days, the attorney may begin providing pro bono services after filing such a statement. An attorney who has assumed emeritus attorney status shall not be relieved of his or her obligation under Maine Bar Rule 6(c)(1) to file annual registration statements and remit annual registration fees pursuant to Maine Bar Rule 6(c)(1).

(3) *Definition of Approved Legal Services Organization.* For purposes of this Rule, an approved legal services organization shall include a pro bono publico legal services program sponsored by a court-annexed program, the Maine State Bar Association, the University of Maine School of Law, or a not-for-profit organization that provides legal services to persons of limited means and that receives funding from the federal Legal Services Corporation, the Maine Bar Foundation, or the Maine Civil Legal Services Fund, and in addition, shall include any not-for-profit legal services organization designated as an approved legal services organization after petition to the Supreme Judicial Court.

(e) Register of Attorneys. Based upon the information made available to the Board by the filing of the statements provided for under this rule, or otherwise, and upon such other investigatory procedures as may be established by the Board, consistent with these rules, the Board shall compile and keep current a register for the Court of all persons admitted as members of the Bar of this state, and records of the death or other termination or suspension of the right of any attorney to practice law in this state. The Board shall assign a Bar Number to every admitted attorney. When attorneys change their business or home contact information, the updated information must be supplied by the attorney within 30 days to the Board and to the Office of Information Technology of the Administrative Office of the Courts. An attorney's social security number shall not be made available by the Board to the public. For the protection of the public, the Board's records must contain an address, which may be a post office box address, for every attorney, which address shall be made available to the public. The Board will only disclose an attorney's home address if no current office address or post office box address is provided. All other information contained in such register and records shall be available to the public subject to Board Regulations and policies.

(f) Removal From Register. Upon the filing of a notice that an attorney wishes to assume inactive status, the attorney shall be removed from the roll of those classified as active until and unless the attorney requests reinstatement to the active roll and pays for the year of reinstatement the fee imposed by Rule 10.

(g) Forms. The Board shall prepare and make available through its offices approved registration statement forms and change of address forms which shall be used by attorneys in complying with this rule.

RULE 7. GRIEVANCE COMMISSION, PROCEDURES AND DISCIPLINE

(a) Term. Initial members of the Grievance Commission shall serve as follows: 3 of its members (one lay person and two attorneys) shall be appointed for a term of 4 years; 3 of its members (one lay person and two attorneys) for a term of 3 years; 3 of its members (one lay person and two attorneys) for a term of 2 years; and 3 of its members (one lay person and two attorneys) for a term of 1 year. Appointments thereafter shall be for terms of 4 years. No member shall be appointed to more than 2 consecutive full terms but a member appointed for less than a full term (originally or to fill a vacancy) may serve two full terms in addition to such part of a full term, and a former member shall again be eligible for appointment after a lapse of one year. The Board shall appoint the Chair and the Vice Chair of the Grievance Commission each year from among the members of the Commission.

(b) Quorum and Action by Panels.

(1) Except as provided in paragraph (2) of this subdivision, a quorum shall exist for the purposes of the Commission's exercise of its authority and duties when a majority of its members are present. The concurrence of a majority of such members present shall be sufficient for any action taken.

(2) The Commission shall be divided by its Chair or Vice Chair into panels of three members each, one of whom in each panel shall be a lay member, to sit and act for the Grievance Commission in the exercise of the authority and duties of the Commission. The Chair or Vice Chair shall designate one member of each panel as Panel Chair, or Acting Chair, as needed. The Grievance Commission panels shall be separately designated and assigned to perform their functions under Rules 7.1(d), (e) on a rotating basis approved by the Chair or Vice Chair.

(3) On a rotating basis with lay members of the Board, lay members of the Commission shall review matters submitted under Rule 7.1(c)(1).

(4) In the event of unavailability of any of the named panel members, the Chair, Vice Chair or a designated Board staff member may assign other members of the Commission to serve on a panel at a preliminary review or public disciplinary proceeding.

(5) If in agreement as to disposition, a majority of two panel members, one of whom being the lay member, may act for the panel on matters considered at a preliminary review, due to reasons of conflict or disqualification of the other panel member.

(6) One attorney member and one lay member of a panel may conduct a public disciplinary proceeding for the panel with the consent of both Bar Counsel and the respondent attorney.

(7) After reasonable notice to all members of the Grievance Commission, or to all members of one of its respective panels, as applicable, and with the consent of all participating members therein, a meeting of the Grievance Commission or a preliminary review by one of its respective panels may be duly constituted and action taken by means of a conference call or similar communications equipment enabling all members participating to hear one another.

(c) Authority and Duties. Panels of the Commission:

(1) shall review and may approve or modify recommendations to it by Bar Counsel for dismissals, dismissals with warnings, and public disciplinary proceedings by Commission panels to consider the issuance of public reprimands or the institution of formal charges;

(2) shall conduct public disciplinary proceedings on charges of misconduct and make findings and issue recommendations with respect thereto; may issue public reprimands for attorney misconduct; and, in any case where discipline of an attorney by the court is found to be required, shall direct Bar Counsel to file an information with the court; and

(3) shall have such other powers, authority and duties not inconsistent with these Rules, as shall be delegated or granted by the Board.

(d) Board Jurisdiction. Any authority or duty of the Grievance Commission or a panel thereof may at any time be assumed and acted upon by the Board on its own motion or at the direction of the Court. The Board may adopt or modify any action recommended directly to it by Bar Counsel or by the Grievance Commission, or direct that a proceeding be instituted before the Grievance Commission.

(e) Procedure [Abrogated].

RULE 7.1 DISCIPLINARY PROCEEDINGS BEFORE THE GRIEVANCE COMMISSION AND THE BOARD

(a) Complaint. Any person may submit to the Board a signed, written complaint alleging misconduct by an attorney subject to these rules.

(b) Investigation. Bar Counsel shall investigate all complaints of attorney misconduct submitted in accordance with Rule 7.1(a). In addition, if the Board or Bar Counsel become aware of information or allegations, in a manner other than receipt of a complaint, involving an attorney which, if true, raise a good faith belief that an attorney's conduct may have violated the Code of Professional Responsibility, Bar Counsel may initiate an investigation under Rule 7.1(a) in the absence of a complaint under the circumstances. However, any such complaint alleging or involving misconduct by an attorney member of the Board or Grievance Commission, or by any attorney employed at the office of Bar Counsel, shall be forwarded directly to the Chair of the Board, or the Vice Chair of the Board, or the Chair of the Grievance Commission in those cases when the Chair and Vice Chair are not able, to act in place of Bar Counsel for conducting an investigation and subsequent disposition pursuant to this Rule or such other Court Rules and Board Regulations governing the Board and Grievance Commission in the processing of grievance complaints.

(c) Dismissal by Bar Counsel.

(1) *Dismissal and Review.* Bar Counsel shall dismiss any complaint if Bar Counsel concludes, with or without investigation, that the matter does not constitute misconduct subject to sanction under these rules. Bar Counsel shall notify the complainant and the attorney of the dismissal in writing. The notification shall briefly and generally state the reasons for dismissal and shall advise the complainant that, upon written request made within 14 days of receipt of the notification, the dismissal will be reviewed by a lay member of the Board or of the Grievance Commission. The reviewing lay person shall approve, disapprove, or modify the terms of the dismissal. Bar Counsel shall notify the complainant and the attorney in writing of the reviewing lay person's action, with a general statement of the reasons therefor and any further action to be taken by Bar Counsel under these rules. If Bar Counsel elects to investigate the matter and in so doing receives a written response from the involved attorney, Bar Counsel may provide that response to the complainant.

(2) *Bar Counsel Files.* Except as provided and authorized by Rule 7.3(k)(3), information contained in Bar Counsel Files shall not be reported in response to inquiries made to the Board as to the good standing or disciplinary record of any

attorney and shall not be used in any subsequent proceedings before the Board or Grievance Commission, or the Court.

(d) Preliminary Grievance Panel Review.

(1) *Bar Counsel Action.*

(A) If a complaint is not dismissed pursuant to Rule 7.1(c)(1), Bar Counsel shall present the complaint and a recommended disposition to a panel of the Grievance Commission selected as provided in Rule 7(b)(2) for preliminary review pursuant to this subdivision (d). Any attorney who is the subject of the complaint shall be given a copy of the complaint and upon Bar Counsel's request, shall submit to Bar Counsel an informal response for consideration by the reviewing panel. Bar Counsel may submit the response to the complainant for reply. Bar Counsel shall recommend either dismissal of the complaint, dismissal of the complaint with a warning, or commencement of public disciplinary proceedings before a different panel of the Grievance Commission pursuant to Rule 7.1(e)(1)-(5). The attorney and complainant shall be notified of Bar Counsel's recommended disposition.

(B) The attorney may, within 14 days of receipt of notification of the recommended disposition, submit in writing a waiver of preliminary review and a demand that Bar Counsel commence public disciplinary proceedings. Bar Counsel shall thereupon prepare and present a formal petition for disciplinary action before a panel of the Grievance Commission pursuant to Rule 7.1(e)(1)-(5). The complainant shall be notified of Bar Counsel's action.

(2) *Grievance Commission Panel Review.* Preliminary review before a panel of the Grievance Commission shall not be open to the public and shall be confidential. Neither the complainant nor the attorney shall be present. The panel shall review the complaint, any response submitted by the attorney, any reply submitted by the complainant, the results of Bar Counsel's investigation, and Bar Counsel's recommended disposition.

(3) *Same: Dismissal.* If the reviewing panel does not find probable cause to believe that misconduct subject to sanction under these rules has occurred, the panel shall dismiss the complaint. Bar Counsel shall notify the complainant and the attorney of the dismissal in writing, briefly and generally stating the reasons for the dismissal. All complaints dismissed pursuant to this paragraph shall be retained on file by Bar

Counsel on the terms and conditions provided by Rule 7.1(c)(2) for complaints dismissed by Bar Counsel.

(4) *Same: Dismissal With a Warning.*

(A) If the reviewing panel finds probable cause to believe that misconduct subject to sanction under these rules has occurred; that the misconduct is minor; that there is little or no injury to a client, the public, the legal system, or the profession; and that there is little likelihood of repetition by the attorney, the panel may direct Bar Counsel to dismiss the complaint with a warning. Bar Counsel shall deliver notice of the dismissal and the terms of the warning in writing personally or by mail to the attorney and shall notify the complainant of the fact that the complaint has been dismissed with a warning, briefly and generally stating the reasons for that disposition.

(B) Dismissal with a warning is not discipline. A complaint dismissed with a warning shall not be reported in response to inquiries made to the Board as to the good standing or disciplinary record of an attorney, nor need an attorney report or disclose the same in any inquiry made to or of such attorney with respect to the imposition of any disciplinary action. The fact that a previous complaint was dismissed with a warning may be used in subsequent preliminary panel reviews or public disciplinary proceedings only after a finding of misconduct in the subsequent matter, and only as evidence of prior misconduct bearing upon the gravity of the sanction to be imposed in the subsequent review or proceedings.

(C) A dismissal with a warning after preliminary review under this paragraph (4) may not be appealed to the Board by the attorney, the complainant, or Bar Counsel and is not subject to judicial review. The attorney may, within 14 days after receipt of notice of dismissal with a warning, demand in writing that Bar Counsel commence public disciplinary proceedings. The dismissal with warning shall thereupon be vacated, and Bar Counsel shall prepare and present a formal petition for disciplinary action before a different panel of the Grievance Commission pursuant to Rule 7.1(e)(1)-(5). The complainant shall be notified of Bar Counsel's action.

(5) *Same: Probable Cause for Further Proceedings.* If the reviewing panel finds probable cause to believe that misconduct subject to sanction under these rules has occurred for which a public reprimand should be issued or an information seeking suspension or disbarment should be filed, the panel shall direct Bar Counsel to prepare and present a formal petition for disciplinary action before a different panel

of the Grievance Commission pursuant to Rule 7.1(e)(1)-(5). The complainant shall be notified of the reviewing panel's action.

(e) Public Disciplinary Proceedings Before a Grievance Commission Panel.

(1) *Petition; Service and Answer*. Bar Counsel shall commence public disciplinary proceedings by filing a petition for disciplinary action before a panel of the Grievance Commission selected as provided in Rule 7(b)(2). The petition shall set forth specific charges of alleged misconduct. A copy of the petition, together with a notice setting a time for answer that shall be not less than 20 days after service, shall be served by Bar Counsel upon the respondent attorney either by registered or certified mail, with return receipt requested, or by any method provided in Rule 4 of the Maine Rules of Civil Procedure. The respondent attorney shall file an answer within the stated time. In the event that the respondent attorney fails to file an answer, the facts set forth and the misconduct alleged in the petition shall be taken as admitted, but the respondent attorney may be heard on the question of sanctions.

(2) *Hearing*.

(A) The disciplinary panel shall hold a hearing on the petition. The Board shall serve notice of the time and place of hearing on the respondent attorney and the complainant either by regular mail or by registered or certified mail, with return receipt requested, at least 15 days in advance of the date thereof.

(B) The hearing shall be open to the public, except that to protect the interests of a complainant, witness, third party or respondent attorney, the panel may, upon application and for good cause shown, issue a protective order prohibiting the disclosure of specific information otherwise privileged or confidential and direct that the proceedings be conducted so as to implement that order. The deliberations of the panel following any hearing under this subdivision shall not be open to the public. The decision of the panel following any hearing under this subdivision shall be made available to the public.

(C) At the hearing, Bar Counsel shall present such evidence as Bar Counsel deems appropriate and may cross-examine witnesses. The respondent attorney may be represented by counsel, may cross-examine witnesses, and may present evidence. Evidence shall be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The panel may exclude irrelevant or unduly repetitious evidence. The Board shall cause all

proceedings before the panel to be stenographically or electronically recorded in a form that will readily permit transcription.

(D) The Chair of the Panel of the Grievance Commission conducting the hearing shall preside and have the power to control the course of proceedings and regulate the conduct of those individuals appearing as counsel, parties, or witnesses. The failure of an attorney participating in such a hearing as a party, counsel for a party, or as a witness to obey an order of the Chair shall constitute a violation of Maine Bar Rule 3.2(f), and if committed by a respondent attorney may be duly considered by the panel in its disposition of the matter before it.

(E) Subject to approval by the Chair of the Panel, all of the hearing formalities of this Rule may be waived by a signed, stipulated agreement of the parties. When such a waiver includes or incorporates the parties' submission of an agreed proposed sanction order, that waiver shall also contain the respondent attorney's signed waiver of the right to file a petition for review under Rule 7.2.(a).

(3) *Grievance Commission Panel Determination.*

(A) Dismissal. The disciplinary panel shall dismiss the petition if it finds, on the evidence and arguments presented, that no misconduct subject to sanction under these rules occurred.

(B) Dismissal With A Warning. If the disciplinary panel finds that misconduct subject to sanction under these rules has occurred; that the misconduct is minor; that there is little or no injury to a client, the public, the legal system, or the profession; and that there is little likelihood of repetition by the attorney, the panel may dismiss the complaint with a warning having the effect and consequences provided in Rule 7.1(d)(4)(B). The attorney may obtain review by the Board of any objection to the warning or its terms as provided in Rule 7.1(e)(5).

(C) Public Reprimand or Information. If the disciplinary panel finds that misconduct subject to sanction under these rules has occurred and that none of the conditions set forth in subparagraph (B) of this paragraph is present, the panel shall either issue a public reprimand to the respondent attorney or, upon a finding of probable cause for suspension or disbarment, shall direct Bar Counsel to commence an attorney discipline action by filing an information pursuant to Rule 7.2(b). In determining the appropriate sanction, the panel shall consider the following factors among others: (i) whether the attorney has violated a duty owed to a client, to the

public, to the legal system, or to the profession; (ii) whether the attorney acted intentionally, knowingly, or negligently; (iii) the amount of actual or potential injury caused by the attorney's misconduct; and (iv) the existence of any aggravating or mitigating factors. In the event that the panel determines that any proceedings should be concluded by public reprimand, it shall arrange through Bar Counsel for delivery of the reprimand to the respondent attorney in person or otherwise. The respondent attorney may petition the Court for review of the reprimand as provided in Rule 7.2(a).

(4) *Report of Findings and Actions.* The disciplinary panel shall report promptly to the Board its findings, determinations and actions, together with a record of the proceedings before it. A copy of the report shall be forwarded to the respondent attorney, and counsel, if any.

(5) *Objections to the Panel Report.*

(A) By Respondent Attorney. Within 21 days after delivery of notice of a dismissal of a complaint with a warning, the respondent attorney may file with the Board an objection to the warning or its terms, giving notice to Bar Counsel.

(B) By Bar Counsel. Within 21 days of receipt of the report of the disciplinary panel, Bar Counsel may file with the Board an objection to the findings and recommendations of the report, giving notice to the respondent attorney.

(C) Procedure Upon Objections. The Board shall set dates for submission of oral arguments, unless waived, by Bar Counsel and the respondent attorney, and shall thereupon proceed, through a panel of at least three members of the Board (no one of whom shall have been a member of a Grievance Commission reviewing or disciplinary panel on the matter), to be designated by the Board or by the Chair or Vice Chair, to determine the issue. The Board panel may deny the objection; order dismissal with any warning expunged; remand the matter to the disciplinary panel for further consideration; dismiss the complaint with a warning having the effect provided in Rule 7.1(e)(3)(B); enter a public reprimand having the effect provided in Rule 7.1(e)(3)(C); or, upon a finding of probable cause for suspension or disbarment, direct Bar Counsel to commence an attorney discipline action by filing an information pursuant to Rule 7.2(b). If the Board denies the objection, that action shall be final as to the party presenting it.

RULE 7.2 DISCIPLINARY PROCEEDINGS BEFORE THE COURT

(a) Petition for Review of Public Reprimand.

(1) *Petition and Answer.* Within 21 days after delivery of a public reprimand, a respondent attorney may file a petition for review of the action of the disciplinary or Board panel by a single justice of the Court. The petition for review shall be filed with the Executive Clerk of the Court by the respondent attorney and shall be served by the respondent attorney at the same time upon Bar Counsel by registered or certified mail. The petition for review shall include copies of the petition and answer filed with the Commission and of the reprimand and shall contain a concise statement of the grounds upon which the respondent attorney seeks relief and a demand for the specific relief sought. Within 21 days after receipt of the petition for review, Bar Counsel shall file an answer with the Executive Clerk of the Court and shall transmit a copy thereof to the respondent attorney and the complainant.

(2) *Preparation of Record.* Within 21 days after filing the answer, Bar Counsel shall prepare and file the complete record of the proceedings and shall furnish a copy thereof to the respondent attorney. If the respondent attorney believes that the record filed by Bar Counsel is either incomplete or over-inclusive, the respondent attorney shall serve notice upon Bar Counsel within 10 days after the record is filed. This notice shall include specific proposals by the respondent attorney regarding additions or deletions from the record filed by Bar Counsel. Bar Counsel and the respondent attorney shall attempt to agree upon the contents of the record. If the parties cannot agree, the respondent attorney may request that the court modify the contents of the record.

(3) *Motion for Trial of the Facts.* If, on motion, the court finds in its discretion that the respondent attorney ought to have a trial of the facts, the court may order a hearing to permit the introduction of evidence that does not appear in the record of the proceedings before the Grievance Commission disciplinary panel and that has not been stipulated. A motion for a trial of the facts shall be filed within 21 days after the petition is filed. The failure of a respondent attorney to file such a motion shall constitute a waiver of any right to a trial of the facts. With the motion the respondent attorney shall also file a detailed statement, in the nature of an offer of proof, of the evidence to be introduced at the hearing. That statement must be sufficient to permit the court to make a proper determination as to whether any trial of the facts as presented in the motion and offer of proof is appropriate and if so to what extent.

After hearing, the court shall issue an appropriate order specifying the future course of proceedings. The court on its own motion may order that additional evidence be taken.

(4) *Scope of Review.* Except where otherwise provided by order of court pursuant to subsections (3) or (5) hereof, review of the decision of a Grievance Commission disciplinary panel or Board panel to impose a public reprimand shall be based upon the record of the proceedings before the panel. The judgment entered after such review may affirm, vacate or modify the decision of the panel. Any findings of fact of the Grievance Commission disciplinary panel shall not be set aside unless clearly erroneous. Either party may appeal to the Law Court within 10 days from entry of the judgment of the single justice.

(5) *Finding of Probable Cause.* If at any stage of the proceedings on petition for review, the court determines that there is probable cause that the matter be concluded by suspension or disbarment, the court shall direct Bar Counsel to file an information and the matter shall be conducted as an attorney discipline action in accordance with subdivision (b) of this rule.

(b) Attorney Discipline Actions Before the Court.

(1) *Commencement.* An attorney discipline action authorized pursuant to Rule 7.1(e)(3)(C) or (5)(C) shall be commenced by the filing of an information with the Executive Clerk of the Court. The information shall allege that the respondent is an attorney subject to these rules and has conducted herself or himself in a manner unworthy of an attorney admitted to the Bar of this State for the reasons specified in the information. The Board shall be responsible for serving the information, together with a summons, upon the respondent attorney in the manner provided by Rule 4 of the Maine Rules of Civil Procedure.

(2) *Procedure.* An attorney discipline action shall be heard by a single justice of the Supreme Judicial Court assigned by the Chief Justice to hear the action. To the extent appropriate, and except as otherwise provided in these rules, the Maine Rules of Civil Procedure and the Maine Rules of Evidence shall govern attorney discipline actions. The Board shall be treated as the plaintiff and the respondent attorney as the defendant; and the action shall be captioned "The Board of Overseers of the Bar v. [name of respondent attorney]." In applying those rules, and in this subdivision, the word "court" shall mean the single justice of the Supreme Judicial Court assigned to

hear the action; and the word "clerk" shall mean the Executive Clerk of the Supreme Judicial Court.

Rules 12(c), 13, 14, 16, 26 through 37, and 56 of the Maine Rules of Civil Procedure shall not apply to attorney discipline actions; provided, however, that:

(A) Bar Counsel shall furnish to the respondent attorney, within a reasonable time after the filing of the information, copies of all exhibits presented to the Grievance Commission disciplinary panel or the Board in the proceedings leading to the information. The stenographic or electronic record, as required by Maine Bar Rule 7.1(e)(2)(c), and any other matter within Bar Counsel's possession or control that is discoverable under Rule 26 of the Maine Rules of Civil Procedure shall be made available to the respondent attorney at the office of Bar Counsel at any reasonable time for inspection and copying at the respondent attorney's expense.

(B) Discovery pursuant to Maine Rules of Civil Procedure 26 through 37 may be had, upon a showing of good cause, by order of court.

(C) The court may in its discretion hold a prehearing conference with the attorneys for the parties to consider such matters as may aid in the disposition of the action and may by written order limit the issues to be tried.

(3) *De Novo Proceedings.* The trial of an attorney discipline action shall be de novo.

(4) *Burden of Proof.* In an attorney discipline action the Board shall have the burden of proving by a preponderance of the evidence the charges specified in the information.

(5) *Judgment and Appeal.* The judgment entered in an attorney discipline action may impose a reprimand, suspension for a definite period or disbarment, or may dismiss the information. Either party may appeal to the Law Court within 21 days from the entry of the judgment of the single justice.

(6) *Attorney's Status Pending Appeal.* Pending appeal to the Law Court, a judgment of suspension or disbarment shall, unless stayed in whole or in part by the single justice or by the Law Court, be given full force and effect in accordance with the provisions of Rule 7.3(i).

(7) *Bypassing Complete Grievance Commission Preliminary Review When Another Matter Pending Against the Respondent.* Whenever a respondent attorney is the subject of a disciplinary proceeding either authorized or instituted pursuant to Rule 7.1(e) or 7.2(a), (b), Bar Counsel may, with the consent of the Grievance Commission panel, commence a disciplinary action before the Court, pursuant to Rule 7.2(b), concerning any allegations of misconduct by the same respondent attorney that have subsequently come to the attention of Bar Counsel, and have been investigated by Bar Counsel pursuant to Rules 7.1(b) and (c), and reviewed by the Grievance Commission pursuant to Rule 7.1(d), even though there has been no hearing before the Grievance Commission as to those subsequent allegations of misconduct as is usually required under the provisions of Rule 7.1(e)(1)-(5).

(8) *Expenses of Proceedings.* In addition to any discipline imposed by the court, the court may, when it deems it appropriate, also require the respondent attorney to pay the reasonable expenses incurred by the Board in the investigation of the matter or in the conduct of hearings before the Grievance Commission or before the court. The court may make such orders as are just concerning the payment of such expenses including ordering that the respondent attorney be suspended from the practice of law until such expenses are paid.

(9) *Intervention by the Attorney General.* [Abrogated]

(c) Temporary Suspension.

(1) Pending final determination by the Grievance Commission of any disciplinary proceeding, Bar Counsel, with the approval of the Board, may petition the Court for an order temporarily suspending any member of the Bar from the practice of law in this State if there is a substantial probability that the attorney has committed a violation of the Code of Professional Responsibility that threatens irreparable injury to any client, the public or to the administration of justice.

(2) The petition for temporary suspension shall set forth a plain and concise statement of the grounds therefor, shall be verified and supported by affidavit, and shall be served upon the respondent attorney by sending it by certified or registered mail to the address furnished by the respondent attorney in the last registration statement filed in accordance with Rule 6, or to the respondent attorney's last known business address or home address if no registration statement has been filed. The Court, after affording the respondent attorney an opportunity to be heard, may make such order, including temporary suspension, as it deems appropriate.

RULE 7.3 DISCIPLINARY PROCEEDINGS; OTHER PROVISIONS

(a) Immunity.

(1) *Complainants and Witnesses.* In the absence of malice, the complainant and any witness shall be immune from liability based upon the filing of a complaint or the giving of any testimony in a proceeding hereunder.

(2) *Members of the Board, Commission, etc.* [Deleted effective January 1, 1995.]

(b) Refusal of Complainant to Proceed; Compromise; Restitution. Abatement of an investigation or related proceedings shall not be required by the failure of the complainant to sign a complaint or to testify, or by any settlement, compromise or restitution.

(c) Pending Civil or Criminal Litigation.

(1) The investigation or prosecution of complaints involving material allegations which are substantially similar to the material allegations of pending criminal or civil litigation shall not be deferred unless the Board or the Court shall order such deferment as to which either the Court or the Board may impose conditions.

(2) The acquittal of the respondent attorney on criminal charges, or a verdict or judgment in the respondent attorney's favor in a civil litigation involving substantially similar material allegations, shall not require abatement of a disciplinary investigation or proceeding predicated upon the same material allegations.

(d) Conviction of Crimes.

(1) Upon the filing with the Court by Bar Counsel of a certificate of the clerk of any court establishing that an attorney has been convicted of a crime demonstrating unfitness to engage in the practice of law, whether the conviction resulted from a plea of guilty or nolo contendere or from a verdict after trial or otherwise, the Court shall, if satisfied that the crime demonstrates unfitness to practice law, enter an order to show cause why the attorney should not be immediately suspended from the practice of law, regardless of the pendency of an appeal of the conviction, pending final disposition of any disciplinary proceeding commenced upon such conviction. The

Court, after affording the attorney opportunity to be heard, may make such order of suspension as may be advisable in the interest of the public, the Bar and the Court.

(2) A certificate of final judgment of conviction of any attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding based upon the conviction subject to the provisions of paragraph (5) below.

(3) Upon the receipt of a certificate of conviction of an attorney for a crime covered by (1) above, Bar Counsel, in addition to any suspension of the attorney imposed by the Court, shall institute formal proceedings before a panel of the Grievance Commission, or, with the consent of the Chair or Vice Chair of the Grievance Commission, may, in lieu of a proceeding before the panel, commence a disciplinary action before the Court pursuant to Rule 7.2(b). A disciplinary proceeding so instituted need not be brought to hearing until all appeals from the conviction are concluded.

(4) Upon receipt of a certificate of a final judgment of conviction of an attorney for a crime not included within (1) above, the Court may refer the matter to the Board to take appropriate action, which may include investigation by Bar Counsel or a proceeding before the Grievance Commission.

(5) An attorney suspended hereunder will be reinstated immediately upon the filing of a certificate that the underlying conviction for a crime has been reversed or set aside, but the reinstatement need not terminate any formal proceeding then pending against the attorney.

(6) It is the duty of an attorney admitted to practice in this State who is convicted in any court of any crime to notify Bar Counsel in writing within 30 days of the entry of the judgment of conviction. Such notification shall include a certificate from the respective court clerk establishing the conviction, and shall be required regardless of the pendency of an appeal or other post-conviction proceeding.

(7) Upon being advised that an attorney has been convicted of a crime covered by paragraph (1) above within this State and that no certificate has been filed under paragraph (6) above, or of such a crime in another jurisdiction, Bar Counsel shall obtain a certificate of the final judgment of conviction and transmit it or a copy thereof to the Court.

(e) Proceedings Where an Attorney Is Declared to Be Incompetent or Is Alleged to Be Incapacitated.

(1) Where an attorney has been judicially declared incompetent, or acquitted of a crime by reason of mental illness, or committed to a mental hospital after a judicial hearing, or where an attorney has been placed by court order under guardianship or conservatorship, the Board, on reference from any court or on its own motion, may, in its discretion, give the attorney the opportunity to resign or to agree to such a suspension, the Court, upon petition of the Board or upon its own motion, may enter an order to show cause why the attorney should not be suspended from the practice of law. A copy of such order shall be served upon the attorney, the attorney's personal representative, if any, and the director of the mental hospital to which the attorney is committed, if any, in such manner as the Court may direct.

(2)(A) Bar Counsel may, after investigation, seek a determination by the Board, or a panel thereof, after hearing, whether an attorney is incapacitated from continuing practice by reason of mental infirmity or addiction to drugs or intoxicants. Upon so finding, the Board shall, promptly petition the court to determine whether the attorney is so incapacitated. The Court after due notice and hearing may make any orders necessary or appropriate to protect the public interest, including an order suspending the attorney.

(B) The Chair of the Board of Overseers, or in the absence of the Chair, the Vice Chair, upon an application by Bar Counsel alleging such incapacity of an attorney together with an allegation that the continued practice of such attorney poses a substantial threat of irreparable harm to the public, may direct that such petition seeking the suspension of the attorney be filed directly with the Court. The Court may order such action as it deems appropriate, including an expedited hearing. The Court may enter an interim order suspending the attorney pending such expedited hearing. With notice to Bar Counsel, the attorney may move for dissolution or modification of the interim order of suspension.

(3) If during a disciplinary proceeding the respondent-attorney claims to be suffering from disability by reason of mental or physical infirmity or illness, or because of addiction to drugs or intoxicants, which makes it impossible to present an adequate defense, the Court may suspend the respondent attorney from continuing to practice law until a determination has been made concerning the respondent attorney's capacity to continue to practice law, and may take other appropriate action.

(4) Any attorney who has resigned or has been suspended under the provision of this subdivision may apply for reinstatement in accordance with Rule 7.3(j) after the expiration of 1 year and annually thereafter, or at such shorter intervals as the Court may permit. The Court may enter any appropriate order or orders in connection with an application, including an order for a medical and mental examination of the attorney, at the attorney's expense or at public expense. Where an attorney suspended under this subdivision, has been judicially declared to be competent, the Court may dispense with further evidence that the disability has been removed.

(f) Appointment of a Proxy to Protect Clients' Interests When Attorney Is Disabled, Missing or Deceased.

(1) Whenever an attorney is disabled, missing or deceased, and no associated lawyer (see M. Bar R. 3.15(a)) or lawyer designated in the disabled, missing or deceased attorney's annual registration statement under M. Bar R. 6(a)(1) is available to act to protect the interests of clients and conclude the law practice, the Court may appoint a Proxy who is a licensed Maine attorney in good standing with the duties described in this Rule. A Proxy shall be authorized by Court order to take some or all of the following actions:

(i) Secure the professional files, client data and client property in an appropriate location and notify the Board of Overseers of that location;

(ii) Create an inventory of the open and closed client files;

(iii) Give priority attention to client matters that are identified as open, active and apparently time sensitive, including notifying clients of the need to seek new counsel or to represent themselves; if necessary the Proxy may seek protection for certain clients by giving notice to tribunals or others concerning the circumstances giving rise to the Proxyship, without entering an appearance for the client.

(iv) Notify all clients that the law practice is concluding and invite clients to retrieve their client files. Such notice may be by letter, phone, email, newspaper advertisement in a newspaper in general circulation in the county where the law practice was located and/or such other method as will effect notice. Notice to clients with open matters should be made by as direct means as possible;

(v) Guide the personal representative or conservator of the deceased, missing or disabled attorney in prudently utilizing the operating accounts to effect the conclusion

of the practice, including the temporary retention of office staff or hiring other personnel as necessary and appropriate;

(vi) Guide the personal representative or conservator of the deceased, missing or disabled attorney in the appropriate distribution of client funds and property held in trust;

(vii) Submit to the Court a record of hours worked and disbursements made to allow in some cases for payment of legal fees at the State court appointment rate. The assets or estate of the deceased, missing or incapacitated attorney shall be the first choice for source of payment to the Proxy. A Proxy may serve in a pro bono capacity. Otherwise, a Proxy may be compensated from another source ordered by the Court.

(viii) Continue to act as Proxy until discharged by the Court in accordance with paragraph 3 of this Rule;

(ix) Take any and all other appropriate action consistent with the discretion vested in the Proxy by the Court and/ or as specifically ordered by the Court.

(2) Prior to petition for discharge, the Proxy shall formulate for the approval of the Court a plan for the custody, care, appropriate release and ultimate destruction of client files. The plan will identify a file caretaker (who may be the Proxy) who will maintain and appropriately release the client files to clients subsequent to the discharge of the Proxy. The plan must provide for confidential destruction of all client files and data, regardless of content, eight (8) years from the date of the discharge of the Proxy. The destruction date may be earlier if so ordered by the Court. The plan must include the requirement that the file caretaker provide written notice to the Board of Overseers confirming the confidential destruction of files and data immediately after it has occurred.

(3) The Proxy shall serve until discharged by the Court. The Proxy may petition the Court for discharge from appointment upon completion of duties or sooner for other good cause. With the petition for discharge the Proxy shall file a report of services rendered. With the approval of the court, the report or any part thereof may be filed under seal. The report should include:

(i) The inventory of files and the status of each file as released or retained;

(ii) The plan for the security and handling of the retained client files;

(iii) An accounting from the personal representative or conservator of the law practice operating accounts during the period of Proxyship;

(iv) An accounting from the personal representative or conservator of the law practice client trust fund accounts during the period of Proxyship; and

(v) Any other information deemed by the Proxy or the Court to be necessary and appropriate;

(4) Any Proxy so appointed shall not disclose any information contained in any file listed in such inventory without the consent of the client to whom such file relates except as may be necessary to carry out an order of court including any order under this Rule. Any Proxy may be engaged by any former client of the deceased, missing or disabled attorney, provided that the Proxy informs any such client in writing that the client is free to choose to employ any attorney, and that the Court's appointment order under section (2) of this Rule does not mandate or recommend employment by the client of the Proxy. The Proxy is subject to all Bar Rules, including Bar Rule 3.4 on conflicts of interest. However, the client’s retention of the Proxy as successor counsel is not a per se conflict of interest solely by reason of the Proxy’s appointment under this Rule.

(5) The Proxy shall be protected from liability for professional services rendered in accordance with this Rule to the extent permitted by law.

(6) In every case, the Proxy shall provide copies of all pleadings and orders under this Rule to the Board of Overseers of the Bar.

(g) Resignations by Attorneys Under Disciplinary Investigation.

(1) An attorney who is the subject of an investigation under these rules may submit to the Board a letter of resignation, supported by an affidavit that:

(A) the resignation is freely and voluntarily rendered; the attorney is not being subjected to coercion or duress and is fully aware of the implications of submitting the resignation;

(B) the attorney is aware that there is presently pending an investigation into allegations of misconduct, the nature of which allegations the attorney shall specifically set forth; and

(C) the attorney acknowledges that the material facts, or specified material portions of them, underlying the allegations are true.

(2) Upon receipt of such resignation, the Board shall file it, together with its recommendation thereon, with the Court, which after hearing shall enter such order as it deems appropriate.

(3) Any order accepting such resignation under this section shall be a matter of public record unless otherwise ordered by the Court; but the supporting affidavit required under the provisions of subsection (1) shall be impounded, whether or not such resignation is accepted, and shall not be made available for use in any other proceeding unless otherwise ordered by the Court.

(h) Reciprocal Discipline.

(1) Upon the receipt of a certified copy of an order that an attorney admitted to practice in this State has been subject to discipline in another jurisdiction (including any federal court or any state or federal administrative body or tribunal), the Court shall enter an order of notice containing a copy of the order from the other jurisdiction and directing the respondent attorney to inform the Court within 30 days from service of the order of notice of any claim that the imposition of the identical discipline in this State would be unwarranted and the reasons therefor. Bar Counsel shall cause this order of notice to be served upon the respondent attorney by registered or certified mail, with restricted delivery and return receipt requested.

(2) In the event that the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this State may, but need not, be deferred.

(3) Upon the expiration of 30 days from service of the notice under subsection (1) above, the Court, after reasonable notice and hearing, may enter such order as the evidence warrants and may impose the identical discipline unless Bar Counsel or the respondent attorney established, or the Court concludes, that (i) the procedure in the other jurisdiction did not provide reasonable notice or opportunity to be heard; (ii) there was significant infirmity of proof establishing the misconduct; (iii) imposition

of the same discipline would result in grave injustice; or (iv) the misconduct established does not justify the same discipline in this State.

(4) A final adjudication in another jurisdiction that an attorney had been guilty of misconduct may be treated as establishing the misconduct for purposes of a disciplinary proceeding in this State.

(i) Action by Disbarred or Suspended Attorneys or Attorneys Who Resign Under Rule 7.3(g) or Attorneys Who Assume Inactive Status Under Rule 6(c).

(1) *Action by Disbarred Attorneys or Attorneys Suspended for Disciplinary Reasons or Attorneys Who Resign Under Rule 7.3(g).*

(A) Unless the Court orders otherwise, orders imposing suspension or disbarment or accepting the resignation of an attorney under Rule 7.3(g) shall be effective 30 days after entry. The disbarred or suspended attorney or an attorney whose resignation has been accepted under Rule 7.3(g), after entry of the disbarment or suspension order or order accepting the resignation, shall not accept any new retainer or engage as attorney for another in any new case or legal matter of any nature. During the period from the entry date of the order to its effective date, however, the attorney may wind up and complete, on behalf of any client, all matters which were pending on the entry date, unless the Court orders otherwise. The Court may make such orders for assistance by co-counsel or supervision during the period from the entry date of the order to its effective date as are appropriate to protect the interests of the clients.

(B) A disbarred or suspended attorney or an attorney who has resigned under Rule 7.3(g) shall take action (i) to notify all clients (meaning those with whom the attorney then has open engagements) of the disbarment, resignation or suspension and the attorney's consequent inability to act as an attorney after the effective date of the disbarment, resignation or suspension; (ii) to notify each client who is involved in pending litigation or administrative proceedings, and the attorney or attorneys for each adverse party in such matter or proceeding, of the disbarment, resignation or suspension and the attorney's consequent inability to act as an attorney after the effective date of the disbarment, resignation or suspension; (iii) to advise each client promptly to substitute another attorney or attorneys or to seek legal advice elsewhere, and (iv) to give such notice of the Court's action as the Court may direct in the public interest. A disbarred, resigned or suspended attorney shall file with the Clerk and also with the Board within 30 days of the effective date of the disbarment, resignation or

suspension order an affidavit attesting compliance with the provisions of the preceding sentence and the provisions of Rule 7.3(i)(1)(C). Such affidavit shall include a list of the names and addresses of all clients, attorneys, courts, and agencies to whom notice was sent as required by the rules, together with a copy of the text of the notices sent.

(C) It shall be the responsibility of the disbarred or suspended attorney or an attorney who has resigned under Rule 7.3(g) to give notice of the disbarment, resignation or suspension forthwith to each court or agency in which the attorney appears for any party. Any notice of the disbarment, resignation or suspension thus given to the court or agency (or to the attorney or attorneys for an adverse party). Any notice of the disbarment, resignation or suspension thus given to the court or agency (or to the attorney or attorneys for an adverse party) shall state the place of residence of the client of the disbarred, resigned or suspended attorney, and shall identify the particular proceeding by docket number as well as by names of parties.

(D) Whenever the Court deems it necessary, it may appoint an attorney admitted to the Bar of this State to take appropriate action in lieu of, or in addition to, the action directed in subparagraphs (B) and (C) above.

(E) The Board shall promptly transmit a copy of the order of suspension or disbarment or of the order accepting the resignation to the clerk of each court and to each administrative body, state or federal, in which it has reason to believe the disciplined attorney has been admitted to practice.

(F) Any failure by a disbarred, resigned or suspended attorney to comply with any of the provisions of this rule, may be found to constitute a contempt of court and thereupon subject said attorney to such sanctions as the Court may further order, including but not limited to, an extension of the time period of any order of suspension from the practice of law.

(2) Action by Attorneys Suspended for Failure to Register, to Pay the Annual Fee, to Satisfy Mandatory CLE Requirements, or by Attorneys Who Assume Inactive Status.

(A) An attorney who has been suspended for failing to file a registration statement under Rule 6 of the Maine Bar Rules, for failure to satisfy the mandatory CLE requirements imposed by Rule 12, or an attorney who assumes inactive status under Rule 6(c) shall:

(i) not accept any new retainer or engage as attorney for another in any new case or legal matter of any nature;

(ii) notify each client (meaning those with whom the attorney then has open engagements) of the attorney's suspension or assumption of inactive status and the consequent inability to act as an attorney after the effective date of the suspension or assumption of inactive status;

(iii) notify each client who the attorney is advising or representing in pending litigation or administrative proceedings, and the attorney or attorneys or other representative for each other party in such matter or proceeding, of the attorney's suspension and consequent inability to act as an attorney after the effective date of the suspension or assumption of inactive status;

(iv) advise each client promptly to substitute another attorney or attorneys or to seek legal advice elsewhere;

(v) notify each court or federal, state or local administrative agency or private arbitration, mediation or alternative dispute resolution forum in which the attorney appears for any party of the attorney's suspension and consequent inability to act as an attorney after the effective date of the suspension or assumption of inactive status; and any notice of the suspension or assumption of inactive status given to a court, administrative agency or private dispute resolution forum shall state the place of residence of the client of the attorney, and shall identify the particular proceeding by docket number as well as by names of parties, with copies of the notice sent to each party to the proceeding, and

(iv) give such other notice of the Court's action as the Court may direct in the public interest.

(B) Within 30 days of the effective date of the suspension or when filing the notice of the attorney's desire to assume inactive status, the attorney shall file with the Clerk and also with the Board an affidavit attesting compliance with the provisions of the preceding paragraph (A). The affidavit shall include a list of the names and addresses of all clients, attorneys, courts, administrative agencies and private dispute resolution forums to whom notice was sent as required by the rules, together with a copy of the text of the notices sent. If an attorney has no clients or attorneys to notify, a statement to that effect shall be included in the affidavit.

(C) Whenever the Court deems it necessary, it may appoint an attorney admitted to the Bar of this State to take appropriate action in lieu of, or in addition to, the action directed in subparagraphs (A) and (B) above.

(D) The Board shall promptly transmit notice of the suspension or of the assumption of inactive status to the Clerk of each court and to each administrative body, state or federal, in which it has reason to believe the attorney has been admitted to practice.

(j) Reinstatement.

(1) An attorney who has resigned pursuant to subdivision (g) of this rule, or who has been suspended for more than six months or who has been disbarred may not be reinstated otherwise than upon petition filed in the Court after the expiration of the suspension or at least 5 years from the effective date of the resignation or of the order of disbarment, unless otherwise ordered by the Court.

(2) An attorney who has been suspended for a specific period of six months or less need not petition for reinstatement, but shall, upon the expiration of the period and before resuming practice, comply with Rule 6.

(3) An attorney who has been suspended indefinitely or resigned due to disability under the provisions of subdivision (e) may petition for reinstatement as therein provided:

(A) If applicable to the initial suspension or resignation, in addition to the factors required under Section (5) of this Rule, petitioner must also present evidence that:

(i) The disability or infirmity has been removed;

(ii) The attorney has pursued appropriate rehabilitative treatment and continues to do so;

(iii) The attorney has abstained from the use of alcohol or other drugs for at least 1 year; and

(iv) The attorney is likely to continue to abstain from alcohol or other drugs.

(B) The Court may enter any appropriate order or orders in connection with an application, including an order for a medical and mental examination of the attorney, at the attorney's expense or at public expense.

(C) Where an attorney has been suspended or has resigned under this subdivision, and has been subsequently judicially declared to be competent, the Court may dispense with further evidence that the disability has been removed.

(D) The petitioner shall identify every psychiatrist, psychologist and physician by whom, and every hospital or clinic in which, the attorney has been examined or treated since suspension, and upon request shall furnish to the Court written consent to each to divulge such information and records as requested by the Court.

(4) An attorney who has been suspended for non-disciplinary reasons under Rules 6 or 10 of the Maine Bar Rules may petition to the Court for reinstatement.

The Court may enter any appropriate order or orders in connection with such application.

(5) Petitions for reinstatement (including those under subdivision (e)) shall be filed with the Executive Clerk of the Court and also with the Board of Overseers of the Bar accompanied by a $ 200.00 filing fee payable to the Board of Overseers of the Bar. The petitioner shall also provide a completed Board reinstatement questionnaire to Bar Counsel at the same time as the filing of the petition. Upon review and conclusion that the petition and questionnaire have been properly completed and filed, Bar Counsel shall, with or without investigation, either agree with or oppose the petition.

If Bar Counsel agrees that reinstatement is appropriate, the petitioner shall be so informed and the matter shall be placed before the Board for consideration at its next available meeting for the petitioner, petitioner's counsel, if any, and Bar Counsel to appear to allow the Board to confirm that the petitioner's reinstatement should be recommended for approval by the Court, or to direct Bar Counsel to oppose the petition.

If Bar Counsel opposes the petition, the petitioner shall be so informed and the matter shall be immediately referred to the Grievance Commission Chair or Vice Chair for hearing which will ordinarily be by a hearing panel of that Commission.

On any petition referred for hearing, the Grievance Commission shall promptly and on reasonable notice (including reasonable notice to the Attorney General, the Maine State Bar Association and appropriate local bar association and District Attorneys) hear the petitioner who shall have the burden of presenting clear and convincing evidence demonstrating the moral qualifications, competency, and learning in law required for admission to practice law in this State. The petitioner shall also offer clear and convincing evidence that it is likely that reinstatement will not be detrimental to the integrity and standing of the Bar, the administration of justice, or to the public interest. Factors to be considered as to the petitioner's meeting that burden include evidence that:

(A) The petitioner has fully complied with the terms of all prior disciplinary orders;

(B) The petitioner has neither engaged nor attempted to engage in the unauthorized practice of law;

(C) The petitioner recognizes the wrongfulness and seriousness of the misconduct;

(D) The petitioner has not engaged in any other professional misconduct since resignation, suspension or disbarment;

(E) The petitioner has the requisite honesty and integrity to practice law;

(F) The petitioner has met the continuing legal education requirements of Rule 12(a)(1) for each year the attorney has been inactive, withdrawn or prohibited from the practice of law in Maine, but need not complete more than 22 credit hours of approved continuing legal education for that entire period of absence from practice, provided that: (1) no more than one half of the credit hours are earned through in-office courses, self-study, or a combination thereof; and (2) at least two credit hours are primarily concerned with the issues of ethics or professional responsibility.

(6) The Grievance Commission shall transmit to the Board and to the petitioner its findings and recommendations by written report, and provide the Board with any record it has made. If no timely objection to the report is filed by either party, the Board shall adopt the Commission's findings and recommendations, and so inform the Court. After consideration of a party's timely objection to the report the Board shall file its recommendations and findings with the Court, together with any record that has been made. The Court shall, with or without hearing, grant or deny the petition for reinstatement by written order which may include such conditions to be

met by a specific date on the petitioner's reinstatement as the Court deems necessary to protect the public interest. The Court may, before granting the petition, require that by a specific date the petitioner take and pass the modified bar examination (or its then equivalent) as administered by the Board of Bar Examiners of this State.

(7) The petitioner shall pay for any stenographic transcription(s) of the reinstatement proceedings, and the Court in its discretion may direct that the petitioner pay any additional expenses incurred in connection with a petition for reinstatement.

(k) Confidentiality.

(1) All inquiries, letters, replies, records, documents and files relating to any complaints alleging misconduct by an attorney shall be kept confidential by the Board, except for any disciplinary pleading and exhibits as filed under Rule 7.1(e) or 7.2.

(2) In the event a grievance complaint is predicated upon the conviction of the respondent attorney for a crime, or the Board determines that the matter is based upon allegations that have become generally known to the public, the existence and status of that complaint may be publicly commented upon by the Board but shall otherwise be governed by section (1) of this Rule. In all instances, a complainant of interest shall be informed of the disposition by the Grievance Commission of the complaint as provided in Rule 7.1.

(3) The provisions of this subdivision shall not be construed to deny access to relevant information to authorized agencies investigating the qualifications of judicial candidates, or to other jurisdictions investigating qualifications for admission to practice or considering reciprocal disciplinary action, or to law enforcement agencies investigating qualifications for government employment or to the National Discipline Data Bank of the American Bar Association where discipline under these rules has been imposed, or to the Committee on Judicial Responsibility and Disability, in accordance with Rule 1(a) or to the Lawyers' Fund for Client Protection under LFCP Rule 12(d).

(4) The provisions of this section shall not be construed to prevent Bar Counsel or any other person from notifying i) the appropriate law enforcement agency of complaints that accuse the respondent attorney of conduct in violation of a criminal law, or ii) a lawyer serving in a substance abuse program approved by the Board, of

the name of any lawyer whom Bar Counsel determines should be contacted concerning that program.

(5) The provisions of this section shall not be construed to prohibit Bar Counsel's use of relevant information in the investigation or prosecution of complaints pursuant to Rules 7.1(c), (d) or 7.2.

(6) Notwithstanding any other provisions of these Rules, any person, including but not limited to members of the Board, Grievance Commission and Board staff may notify governmental officials of actual or threatened criminal conduct by any individual.

(l) Substituted Service. In the event a respondent attorney cannot be located and served in hand with any notice required so to be served under these rules, such notice may be served upon the respondent attorney by addressing it by certified, registered or first-class mail, as the court or the Board may direct, to the address furnished by the respondent attorney in the last registration statement filed in accordance with Rule 6 (or to the respondent attorney's last known business or home address if no registration statement has been filed), and by such publication as the Court may direct.

(m) Subpoena Power.

(1) At any stage of an investigation or formal proceeding, a witness or respondent attorney may be summoned by subpoena to appear before Bar Counsel, the Grievance Commission or a panel thereof, the Board or a panel thereof, or the Court. Any member of the Board or of the Grievance Commission, a notary public, or the Clerk of the Superior Court in any county may issue subpoenas for witnesses and subpoenas duces tecum to compel the production of books, papers and photographs. The Board, the Grievance Commission or the Chair of any panel thereof, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may quash or modify any subpoena issued for appearance before Bar Counsel, the Board, the Grievance Commission or panels thereof, if the subpoena is unreasonable or oppressive. Witness fees in all proceedings under this rule shall be the same as for witnesses before the Superior Court. When a witness who has been subpoenaed fails to appear without reasonable excuse, the Supreme Judicial Court or any justice thereof, or the Superior Court or any justice thereof, may, on application of Bar Counsel or other interested person, invoke the provisions of Rule 45(f) of the Maine Rules of Civil Procedure for such failure.

(2) Whenever a subpoena is sought in this state pursuant to the law of another jurisdiction for use in lawyer discipline or disability proceedings, and where the subpoena has been duly issued under the law of the other jurisdiction, any member of the Board or of the Grievance Commission, a notary public, or the clerk of the Superior Court in any county, may for good cause shown issue a subpoena or subpoena duces tecum as provided in this section to compel the attendance of witnesses and the production of books, papers and photographs but only in the county where the witness resides or is employed or elsewhere within this state as fixed by any member of the Board or of the Grievance Commission. Service, enforcement, or challenges to this subpoena shall be as elsewhere provided in this rule.

(n) Required Records; Audit. Every attorney subject to these rules shall maintain complete records of the handling, maintenance and disposition of all funds, securities and other properties of a client at any time in the attorney's possession, from the time of receipt to the time of final distribution, and shall preserve such records for a period of 6 years after final distribution of such funds, securities or other properties, or any portion thereof. Where formal disciplinary proceedings have been instituted pursuant to Rule 7.1(e), the Board shall have the power to audit all of the records, files, books of account, bank accounts, vault boxes and other records and depositories which relate to, directly or indirectly, such funds, securities and other properties of a consenting client at any time in the attorney's possession; and every attorney subject hereto shall cooperate fully with respect to the orders of the Board, Bar Counsel and their agents, including certified public accountants appointed by them, with respect to such audit procedures, including the time and place thereof. In furtherance hereof, the Board or Bar counsel may petition for, and any justice of the court may, for good cause shown, enter an ex parte order to such attorney or others, with respect to the exercise of the audit powers and authorities of the board or Bar Counsel hereunder.

(o) Privilege for Peer Assistance or Substance Abuse Communications. In any proceeding under this rule, a respondent attorney has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made by the respondent attorney while seeking or receiving peer assistance or substance abuse treatment under a program approved by the Board of Overseers of the Bar. A "confidential communication" is a communication not intended to be disclosed to third persons other than those to whom disclosure is made in the course of seeking or receiving peer assistance or substance abuse treatment.

RULE 8. CONTINGENT FEES

(a) Definition. In this rule, the term "contingent fee agreement" means an agreement, express or implied, for legal services of an attorney or attorneys (including any associated counsel), under which compensation, contingent in whole or in part upon the successful accomplishment or disposition of the subject matter of the agreement, is to be in an amount which either is fixed or is to be determined under a formula. The term "contingent fee agreement" shall not include an arrangement with a client, express or implied, that the client in any event is to pay to the attorney the reasonable value of the attorney's services and the attorney's reasonable expenses and disbursements.

(b) Good Faith Effort to Comply. Unless expressly prohibited by this rule, no written contingent fee agreement shall be regarded as champertous if made in an effort in good faith reasonably to comply with this rule.

(c) Proceedings or Claims to Which Applicable. No contingent fee agreement shall be made (1) in respect of the procuring of an acquittal upon or any favorable disposition of a criminal charge, (2) in respect of the procuring of a divorce, annulment of marriage, or legal separation, or (3) in connection with any proceeding where the method of determination of attorneys' fees is otherwise expressly provided by statute or administrative regulations. Contingent fee arrangements concerning the collection of commercial accounts and of insurance company subrogation claims made in accordance with usual practices in respect of such cases shall not be regarded as champertous, and shall not be subject to subdivisions (d) and (e).

(d) Formal Requirements. Each contingent fee agreement shall be in writing and in duplicate. Each duplicate copy shall be signed both by the attorney and by each client. One signed duplicate copy shall be mailed or delivered to each client within a reasonable time after the making of the agreement. One such copy (and proof that the duplicate copy has been delivered or mailed to the client) shall be retained by the attorney for a period of three years after the completion or settlement of the litigation or the termination of the services, whichever event first occurs.

(e) Contents of Agreement. Each contingent fee agreement shall contain (1) the name and mail address of each client; (2) the name and mail address of the attorney or attorneys to be retained; (3) a statement of the nature of the claim, controversy, and other matters with reference to which the services are to be performed; (4) a statement of the contingency upon which compensation is to be paid, and whether

and to what extent the client is to be liable to pay compensation otherwise than from amounts collected for that client by the attorney; (5) a statement that reasonable contingent compensation is to be paid for such services, which compensation is not to exceed stated maximum percentages of the amount collected; and (6) a statement regarding the attorney's anticipated expenses and disbursements, if any, for which the client, is to be liable. These may include the following:

A. *Litigation Costs.* Costs of the action, including:

1. Filing fees paid to the clerk of courts;

2. Fees for service of process and other documents;

3. Attendance fees and travel costs paid to witnesses;

4. Expert witness fees and expenses;

5. Costs of medical reports;

6. Costs of visual aids; and

7. Costs of taking depositions.

B. *Travel Expenses.* Expenses for travel by the attorney on behalf of the client.

C. *Telephone.* Disbursements for long-distance telephone calls made by the attorney on behalf of the client.

D. *Postage.* Postage paid by the attorney for mailings on behalf of the client.

E. *Copying.* Costs of photocopying and facsimile telecopying done by the attorney on behalf of the client.

F. *Other: (Specify).*

(f) Fee Arbitration. Disputes concerning contingent fee agreements shall be subject to review in accordance with Rule 9.

(The following form may be used (in connection with Rule 8) and shall be sufficient. The authorization of this form shall not prevent the use of other forms consistent with this rule.)

CONTINGENT FEE AGREEMENT

To Be Executed In Duplicate

Date , 20 .

The client, (Name) (Street & Number) (City or Town)

retains the attorney (Name) (Street & Number) (City or Town) to perform the legal services mentioned in par. (1) below. The attorney agrees to perform them faithfully and with due diligence.

(1) The claim, controversy, and other matters with reference to which the services are to be performed are:

(2) The contingency upon which compensation is to be paid is:

(3) The client is not to be liable to pay compensation otherwise than from amounts collected for the client by the attorney, except as follows:

(4) Reasonable compensation on the foregoing contingency is to be paid by the client to the attorney, but such compensation (including that of any associated counsel) to be paid by the client shall not exceed the following maximum percentages of the gross (net) (indicate which) amount collected. (Here insert the maximum percentages to be charged in the event of collection. These may be on a flat basis or in a descending scale in relation to amount collected.)

(5) The client is to be liable to the attorney for the attorney's reasonable expenses and disbursements as hereinafter specified.

A. Litigation costs. Costs of the action, including:

1. Filing fees paid to the clerk of courts;

2. Fees for service of process and other documents;

3. Attendance fees and travel costs paid to witnesses;

4. Expert witness fees and expenses;

5. Costs of medical reports;

6. Costs of visual aids; and

7. Costs of taking depositions.

B. Travel expenses. Expenses for travel by the attorney on behalf of the client.

C. Telephone. Disbursements for long-distance telephone calls made by the attorney on behalf of the client.

D. Postage. Postage paid by the attorney for mailings on behalf of the client; and

E. Copying. Costs of photocopying and facsimile telecopying done by the attorney on behalf of the client.

F. Other: (Specify).

(6) This agreement and its performance are subject to Rule 8 of the Maine Bar Rules.

WE HAVE EACH READ THE ABOVE AGREEMENT BEFORE SIGNING IT.
Witnesses to signatures
To client: Signature of Client

To attorney:
Signature of Attorney

(If more space is needed, separate sheets may be attached and initialed.)

RULE 9. FEE ARBITRATION

(a) Commission.

(1) The Fee Arbitration Commission shall consist of at least 15 regular members plus such alternate members as may be appointed by the Board. Not less than one-third of the regular members shall be lay persons and the balance (as close to two-thirds as may be) shall be attorneys, each to be appointed by the Board for 3-year terms. Initially 1/3 of the regular members of the Commission shall be appointed for a period of 1 year, 1/3 for a period of 2 years, and 1/3 for a period of 3 years. As each regular member's term of office on the Commission expires, a successor shall be appointed for no more than 2 consecutive full terms but a regular member appointed for less than a full term (originally or to fill a vacancy) may serve two full terms in addition to such part of a full term. A former regular member shall again be eligible for appointment after a lapse of one year. The term of any member which expires while an arbitration is pending before that member or before a panel that includes that member, shall with reference to that arbitration, be extended until such arbitration is concluded, but such extension shall not interfere with the Board's power to appoint a successor to the Commission. The Board shall appoint the Chair of the Commission each year from among the regular members of the Commission. The alternate members shall be appointed by the Board for 3-year terms to serve pursuant to the directions of the Chair of the Commission as substitutes for any regular member who is unable to serve for any particular arbitration. Except with the consent of the parties pursuant to Rule 9(g)(1) or (2), each panel assembled for a particular arbitration shall include at least one attorney member.

(2) Attorney members of the Commission shall have been admitted to the Bar of this State, shall have practiced law for not less than 5 years and shall be selected to provide reasonable geographic representation within this State consistent with subdivision (c) hereof.

(3) Lay members of the Commission shall be residents of this State and shall possess such additional qualifications, including geographic representation consistent with subdivision (c) hereof, as shall seem appropriate to the Board.

(4) The Commission shall be divided by its Chair into 5 panels of 3 members each, at least one of whom in each panel shall be a lay member. The Chair of the Commission shall designate 1 member of each such panel as Panel Chair, and the panel chairs, together with the Chair of the Commission, shall constitute the Executive Council of the Commission.

(b) Executive Council. The Executive Council shall be charged with the responsibility of overseeing the work of the Commission, developing forms to implement the procedure prescribed herein and may formulate procedural regulations not inconsistent with these rules.

(c) Fee Arbitration Panels. The Fee Arbitration Panels shall be separately designated and shall perform their functions by such designation and within the following geographic areas except as otherwise directed by the Chair of, or Secretary to, the Commission:

Panel 1A--within York county

Panel 1B--within Cumberland county

Panel 2--within Androscoggin, Franklin, Lincoln, Oxford and Sagadahoc counties

Panel 3--within Kennebec, Knox, Somerset, and Waldo counties

Panel 4--within Aroostook, Hancock, Penobscot, Piscataquis and Washington counties

In instances where a complainant and a respondent attorney are domiciled or otherwise located in counties which may involve the geographic area of more than 1 panel, the Chair of, or Secretary to, the Commission shall have the authority to direct which of such panels shall hear the dispute in question.

(d) Secretary. The Board may appoint a Secretary to the Commission and to the several panels. The Secretary shall not be responsible for attending panel hearings, nor for providing secretarial or recording services at or during such hearings.

The Secretary shall keep and maintain records of all petitioners and respondents, as well as all proceedings, determinations and awards of the Commission and its respective panels.

The Secretary shall perform such additional duties and have such additional responsibilities as may be assigned by the Board or the Commission.

The Secretary shall have the authority to designate one or more Assistant Secretaries or Secretaries pro tempore for the purpose of performing duties of the

Secretary hereunder and any other duties assigned or requested by the Commission or one of the panels, including attendance at panel hearings and the taking and reporting of a stenographic or recorded transcription thereof.

(e) Procedures.

(1) *Initiation of Proceedings*. Upon receiving a complaint from any source regarding legal fees paid to or charged by an attorney admitted to the Bar of this State, the Secretary shall forward to such complainant a copy of these procedures and any relevant regulations or rules adopted by the Board or the Commission with respect to fee arbitration, together with the blank form captioned "Petition for Arbitration of Fee Disputes". Proceedings before a Fee Arbitration Panel of the Commission shall be initiated by the completion and forwarding to the Secretary of the petition, in which the petitioner shall:

(A) Set forth the petitioner's full name and current address and the attorney with whom the petitioner has a dispute;

(B) Agree to be bound by the decision of a Fee Arbitration Panel;

(C) Represent that the petitioner has made a good faith effort to resolve the dispute with the attorney involved before filing the petition; and

(D) State whether the dispute is the present subject of legal action and certify that the matter has not been finally adjudicated by a court or administrative agency. If the dispute is the subject of other judicial or administrative proceedings, such proceedings shall be identified in the petition.

(2) *Informal Arbitration.* After the petition is filed with the Secretary to the Commission, it shall be expeditiously reviewed by Bar Counsel, who may endeavor to resolve the dispute informally, and for such purposes may communicate directly with the petitioner and the attorney against whom the claim is being made. If the Respondent attorney named in a filed petition is a member of the Board or the Fee Arbitration Commission, the petition shall be immediately referred to the Board Chair or Vice Chair for such action as deemed appropriate including appointment of a panel of the Board to act in place of the Fee Arbitration Commission as provided by M. Bar R. 4(d)(7).

If the dispute is resolved informally, the petition shall be deemed to have been withdrawn, and the petitioner shall be so advised in writing.

(3) *Preliminary Review by Chair.* If Bar Counsel determines that there is no just ground for the complaint or dispute, or that the matter is moot, or that the arbitration has not been commenced within six years from the time the bill in dispute was rendered or the fee paid in whole or in part, whichever occurs first, or that action by the Commission is otherwise unwarranted, Bar Counsel may refer the matter to the Chair of the Commission, together with a brief written report setting forth the facts and Bar Counsel's recommendations.

(A) If the Chair concurs with Bar Counsel's recommendations, the matter shall be closed and the complainant so advised.

(B) If the Chair disapproves Bar Counsel's recommendations, the matter shall be returned to the Secretary for further proceedings.

(4) *Notice to Respondent.*

(A) If the matter is not informally resolved, or has not been closed as a result of the preliminary action by the Chair within 30 days after the filing of the petition, a copy of the petition, together with the blank form captioned "Respondent's Reply and Submission to Arbitration" and a copy of these procedures and any relevant rules and regulations, shall be forwarded, by certified mail, return receipt requested, to the attorney with whom the petitioner is in dispute.

(B) The Secretary shall, upon receipt of a reply by an attorney, forward a copy of the same to the petitioner.

(C) When a petition is filed by a non-client of the named Respondent attorney, prior to notifying the attorney, the Secretary shall provide the client with notice of the petition and request that within 21 days the client consent in writing to the filing and processing of the petition under Rule 9. Should the client fail to provide consent, the Secretary shall refer the matter to the Chair for determination whether any action under Rule 9 is appropriate for the Commission or if dismissal is required pursuant to Rule 3.3(c).

(5) *Referral to Arbitration Panel.*

(A) The Secretary shall forward a copy of the petition with the attorney's reply, if any, to the chair and each member of the arbitration panel responsible for conducting the hearing.

(B) The chair of the arbitration panel shall make every effort to assign the matter for hearing not later than 60 days after the date of receipt of the copy of the petition from the Secretary.

(C) The petitioner and the attorney shall be notified by the Secretary as to the date, time and place of hearing, as well as the names of the members of the arbitration panel appointed to arbitrate the dispute which is the subject matter of the petition. In the event of the unavailability of any of the named members, the Chair or the Secretary of the Commission may designate other members of the Commission to serve at the hearing. Such notice of hearing will, in addition, notify the petitioner and the attorney of their right to present witnesses and documentary evidence in support of their positions, and at their own expense, to have a record of the proceedings made.

(D) If there is then pending before a court or agency of this State an action instituted by either petitioner or respondent involving the disputed fees, then such action shall, upon motion of the petitioner, be stayed until such dispute is resolved pursuant to this rule; and the award hereunder shall be determinative of the action so stayed.

(E) Notice of Client's Right to Arbitrate Legal Fees. At least 30 days before service or filing of a complaint in a civil action against an attorney's client or former client (hereinafter client) to recover fees for professional services previously rendered and/or costs incurred for which no judgment has previously been obtained, an attorney must mail to the client at the client's last known address a written notice of right to arbitrate, which must include at least the following language:

You currently owe the sum of $ in legal fees (and costs) to (name of attorney or firm). If you dispute the fact that you owe any part of the amount claimed to be due, you have the right to have the matter resolved without additional expense to you by arbitration before a panel of the Fee Arbitration Commission. Forms and instructions for filing a petition for arbitration are available from the Board of Overseers of the Bar, 97 Winthrop Street, PO Box 527, Augusta, Maine 04332-0527. Telephone: (207) 623-1121.

(F) Failure to Give Notice. No attorney shall seek to enforce a judgment against a client for attorney fees or costs which has been entered without the required notice of right to arbitrate having been given.

(G) If not earlier resolved pursuant to Rule 9(e)(3), a petition shall later be dismissed by the Secretary upon i.) the petitioner's submission of a written request for dismissal prior to the attorney's filing of a reply to the dispute, or ii.) the filing with the Secretary of a stipulation of dismissal signed by the petitioner and the respondent. A petition shall not otherwise be dismissed except by order of the Chair of the assigned hearing panel or the Chair of the Commission for good cause shown upon such terms and conditions as may be deemed appropriate by that Chair.

(6) *Right to Counsel.* Each party to a dispute shall have the right to be represented at the party's own expense by an attorney at any stage of the arbitration. For cause shown, or on its own motion, an arbitration panel may, in its discretion, obtain the volunteer services of and assign an attorney to represent either the petitioner or the attorney being complained against in any proceeding before the panel.

(7) Any notice or other communication required by this Rule 9 to be given to a petitioner shall be sufficient if mailed in accordance with these rules to the address set forth by petitioner in the petition. Any notice or other communication required to be given to an attorney shall be sufficient if mailed in accordance with these rules to an office or residence address set forth by the attorney on the most current registration statement filed pursuant to Rule 6(a) hereof.

(f) Failure of the Attorney to Reply. If the attorney fails, without good cause, to file a reply within 30 days next after the mailing of the copy of the petition, form of reply and the copy of the procedures and regulations; or if the attorney fails to appear in the proceedings without good cause, the panel may proceed to hear the petition and make its findings and award upon the evidence produced by the petitioner, and the attorney shall be bound by the findings and award of the panel in the same manner, and with the same effect, as on a default judgment entered by the Superior Court of this State.

(g) Arbitration Hearing.

(1) If, at the time set for a hearing before a panel, 3 members are not present, the chair of the panel, or in the event of the chair's unavailability, the other members or member present, may decide either to postpone the hearing, or, with the written

consent of those parties present, to proceed with the hearing with two arbitrators, one of whom shall be a lay member.

(2) If any member of a panel dies or becomes unable to continue to act while the matter is pending and before an award has been made, the proceedings to that point shall be declared null and void and the matter assigned to a new panel for rehearing unless the parties, with the consent of the panel chair, or in the event of the chair's unavailability, the Chair of the Commission, consent to proceed with one or both of the remaining members of the panel.

(3) The members of the arbitration panels shall be vested with all of the powers, and shall assume all of the relevant duties granted and imposed upon neutral arbitrators by the Uniform Arbitration Act, 14 M.R.S.A. § 5927 et seq., to the extent that the same is not in conflict with these rules.

(4) On the hearing date, the arbitration panel shall meet, take testimony, receive other evidence and otherwise conduct an impartial, fair and expeditious hearing on the matter.

(5) Upon request of a party to the arbitration or upon its own determination, an arbitration panel or its chair may, for good cause shown, adjourn or postpone the hearing from time to time.

(6) The chair of the panel shall preside at the hearing. For purposes of admissibility, the chair shall be the judge of the relevance and materiality of the evidence offered and shall rule on questions of procedure. The chair shall exercise all powers relating to the conduct of the hearing. Conformity to the Maine Rules of Evidence shall not be necessary.

(7) The petitioner and the attorney, or counsel representing them, shall be entitled to be heard, to present evidence and to cross-examine parties and witnesses appearing at the hearing. In addition, any panel member shall be entitled to make inquiries of any party or witness at the hearing.

(8) On request of the petitioner or the attorney or any member of the panel, the testimony of witnesses shall be given under oath. When so requested, the chair of the panel may administer oaths to witnesses testifying at the hearing.

(9) If a petitioner who has been notified of the time, date and place of the hearing in accordance with these procedures, fails to appear at the hearing, an arbitration panel or its chair may either postpone the hearing or proceed with the hearing and determine the controversy upon the petition, reply, and other evidence produced.

(10) Either the petitioner or the attorney may have the hearing reported at that party's own expense, but a party having the hearing reported must provide a copy of the transcript, free of charge, to the panel. Further, in such event, any other party to the arbitration shall be likewise entitled to a copy of the transcript, at that other party's own expense, by arrangements made directly with the reporter.

(11) In the event of the death or incompetency of a party to the arbitration proceeding prior to the close of the hearing, the proceeding shall abate without prejudice to either party to proceed in a court of proper jurisdiction to seek such relief as may be warranted. In the event of death or incompetency of a party after the close of the hearing but prior to a decision, the decision rendered shall be binding upon the heirs, administrators, or executors of the deceased and upon the estate or guardian of the incompetent.

(12) A witness or party may be summoned by subpoena to appear before a Fee Arbitration Commission panel. Any member of a Fee Arbitration Commission panel assigned to hear a dispute, a notary public or the clerk of the Superior Court in any county may issue subpoenas for witnesses and subpoenas duces tecum to compel the production of books, papers, photographs or other documents. The Fee Arbitration Commission Chair or any Chair of a panel, upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance therewith, may quash or modify any subpoena issued for appearance before a Fee Arbitration Commission panel, if the subpoena is unreasonable or oppressive. Witness fees in all proceedings under this rule shall be the same as for witnesses before the Superior Court. When a subpoenaed witness fails to so appear without reasonable excuse, the Supreme Judicial Court or any justice thereof, or the Superior Court or any justice thereof, may, upon application of a member of the Fee Arbitration Commission, Bar Counsel, or other interested person, invoke the provisions of Rule 45(f) of the Maine Rules of Civil Procedure for such failure.

(13) In the event there is no written agreement or engagement letter between the parties concerning fees and expenses as to the particular matter in dispute, the arbitration panel shall require that the attorney bear the burden of proof of an

agreement, or other basis for recovery of fees and expenses, and of the reasonableness of the fees and expenses.

(h) Arbitration Award.

(1) The decision of the arbitration panel shall be expressed in a written award, signed by all of the panelists hearing the matter, and thereupon filed with the Secretary. If there is a dissent, it shall be signed separately, but the award shall be binding if signed by a majority of the arbitrators. An award may also be entered on consent of the parties. Once the award is signed and filed, the hearing may not be reopened except upon consent of all parties and a majority of the arbitrators serving on the arbitration panel which heard the matter.

(2) The decision of the arbitrators and their award need not be in any particular form, but shall contain, as a minimum, a statement of the amount or nature of the award, if any, and the terms of payment, if applicable.

(3) The award and determination of the arbitration panel shall be rendered within 20 days after the close of the hearing, unless otherwise extended by the Chair of the Commission.

(4) A copy of the decision containing the award shall be forwarded by the Secretary to the petitioner, the respondent attorney, their respective counsel if any, the Chair of the Commission, and the Board as soon as reasonably possible after the same has been filed.

(i) Enforcement of the Award. Whenever an arbitration panel finds by its award that all or part of the fee paid by the petitioner should be refunded by the attorney, the attorney shall make the awarded refund within 30 days of receipt of the award. If the attorney fails to make the awarded refund within 30 days, the Board shall refer the matter to Bar Counsel for action pursuant to Rule 6(b)(6). The award rendered by an arbitration panel may be enforced in accordance with the Uniform Arbitration Act, 14 M.R.S.A. § 5927 et seq. Section 5928 of Title 14, relating to proceedings to compel or stay arbitration is not applicable to proceedings under this rule.

(j) Confidentiality. With the exception of the award itself, all petitions, replies, records, documents, files, proceedings, and hearings pertaining to arbitrations of any fee dispute under these procedures and regulations shall be confidential, and, unless otherwise ordered by the Court, shall not be open to the public, press, or any person

not involved in the dispute, excepting only the staff and members of the Commission, the Board, the Committee on Judicial Responsibility and Disability in connection with any complaint within its jurisdiction, and any justice of the Court. Notwithstanding that confidentiality, any person, including but not limited to members of the Board, Fee Arbitration Commission and Board staff may notify governmental officials of actual or threatened criminal conduct by any individual.

(k) Immunity.

(1) In the absence of malice, the petitioner and any witness shall be immune from liability based upon the filing of a fee complaint or petition and the giving of any testimony in any proceeding hereunder.

(2) [Deleted effective January 1, 1995.].

RULE 10. ASSESSMENT OF ATTORNEYS FOR EXPENSES OF ADMINISTRATION

(a) Annual Fee. Every attorney required to register in accordance with these rules, other than judicial law clerks, members of the armed forces of the United States who are on active duty outside of the State of Maine, and suspended attorneys, shall pay an annual fee as established by the Court, which shall be paid to the Board with the registration statement on or before August 31 as required by Rule 6(a)(1). Judicial law clerks and members of the armed forces of the United States who are on active duty outside of the State of Maine must file a registration statement and pay the annual fee required for the year in which active or inactive practice is resumed within 30 days of completion of their service. In addition to any registration fee required under the provisions of Maine Bar Rule 6(c)(1), the registration fee for attorneys registering in emeritus status under Rule 6(d) shall be $25.00 per year until otherwise ordered by the Court.

(b) *Failure of Payment*. Any attorney who fails to pay the fee required under subdivision (a) of this rule with the annual registration statement by August 31 is automatically suspended. Notice of the suspension shall be given by the Board by registered or certified mail, and return receipt requested, addressed to the office or home address last known to the Board. Such suspension shall not be effective until thirty (30) days after the date of mailing the notice thereof. The failure to pay shall not be considered a violation of the Code of Professional Responsibility per se and

the suspension for failure to pay shall not constitute the imposition of discipline. Any suspension pursuant to this subdivision shall be subject to Maine Bar Rules 7.3(i)(2) and 7.3(j)(4). An attorney who, after the date of the mailing of such notice of suspension but before the effective date of such suspension, pays the annual fee as required under subdivision (a) of this rule and receives from the Board acknowledgement of such payment, shall be deemed to be in compliance with this rule and shall not be suspended for failure to pay such fee. An attorney aggrieved as a result of a suspension may apply to the Board Chair for summary relief for good cause shown.

(c) Reinstatement Fees. Any attorney suspended under the provisions of subdivision (b) of this rule shall, prior to reinstatement, pay all arrears due from the date of the attorney's last payment to the date of the request for reinstatement, and shall also pay in addition to the $25.00 late fee imposed by Rule 6(a)(1) a reinstatement assessment of $125.00 unless excused from such reinstatement assessment by the Board as a result of its determination that to impose the same would result in a grave injustice under the circumstances. Attorneys who have been suspended within the previous five (5) years for non-compliance with M. Bar R. 12, shall be assessed an additional $50.00 reinstatement fee.

(d) Amount of Fees. The annual fees for the following categories shall be established from time to time by order of the Court on recommendation of the Board:

(1) Attorneys admitted to the practice of law in this State but conducting their practice primarily in another jurisdiction, and not maintaining an office here.

(2) Attorneys admitted to the bar of this State or any other jurisdiction for 3 or fewer years as of January 1 of that year.

(3) Attorneys admitted to the bar of this State or any other jurisdiction for more than 50 years as of such date.

(4) All other attorneys.

(e) Use of Fees Paid. The fees so paid, pursuant to the foregoing sections, together with any other source of funds made available to the Board, shall be used to defray the costs of attorney registration, disciplinary investigation, hearings and enforcement, expenses of fee arbitrations and for such other purposes as the Board, with the approval of the Court, may determine.

(f) Audit. The Board shall annually obtain an independent audit by a certified public accountant of the funds entrusted to it and their disposition, and shall file a copy of such audit with the Court.

RULE 11. PROFESSIONAL ETHICS COMMISSION

(a) Term. Initial members of the Professional Ethics Commission shall serve as follows: Two of its members shall be appointed for a term of 4 years; two of its members for a term of 3 years; two of its members for a term of 2 years; and two of its members for a term of 1 year. Appointments thereafter shall be for terms of 4 years, or where appropriate, for the balance of an unexpired term. No member shall be appointed to more than 2 consecutive full terms, but a member appointed for less than a full term (originally or to fill a vacancy) may serve 2 full terms in addition to such part of a full term, and a former member shall again be eligible for appointment after a lapse of 1 year. The Board shall appoint the Chair of the Professional Ethics Commission each year from among its members.

(b) Quorum and Action. A quorum shall exist for the purposes of the Commission's exercise of its authority and duties when a majority of its members are present. The concurrence of a majority of such members present shall be sufficient for any action taken.

(c) Authority and Duties. The Professional Ethics Commission shall be subject to such rules and procedures as shall be adopted or approved by the Board. The Professional Ethics Commission:

(1) Shall render advisory opinions to the Court, Board, Bar Counsel, and to the Grievance Commission on matters involving the interpretation and application of the Code of Professional Responsibility (Rule 3);

(2) May render advisory opinions on ethical questions posed by attorneys involving the Code of Professional Responsibility (Rule 3);

(3) Shall maintain, at a location within this State approved by the Board, a library containing opinions on ethical questions which have been rendered by the Professional Ethics Committee of the American Bar Association and by other ethics committees in other jurisdictions, such library to be available for the benefit of the

Court, the Board, Bar Counsel, the Grievance Commission, and interested attorneys admitted to the Bar of this State;

(4) May make recommendations to the Board regarding amendments to the Code of Professional Responsibility (Rule 3); and

(5) Shall maintain indexed and up-to-date compilations of its opinions in such manner as shall permit the same to be available to the Court, the Board, Bar Counsel, the Grievance Commission, and to such others as the Board shall determine.

(d) Opinions as Evidence. Opinions of the Professional Ethics Commission shall be admissible in any proceeding in which the interpretation or application of a provision of the Code of Professional Responsibility (Rule 3) is in issue.

(e) Immunity. [Deleted effective January 1, 1995.]

(f) Confidentiality. With the exception of an advisory opinion finally rendered pursuant to this Rule, all inquiries, replies, records, documents, files, and proceedings pertaining to the interpretation of ethical rules and the rendering of advisory opinions with respect thereto shall be confidential, and, unless otherwise ordered by the Court, shall not be opened to the public, press or any person not involved in the rendering of the advisory opinions, excepting only the staff and members of the Professional Ethics Commission and their professional associates actively involved in working on an advisory opinion for such member, the staff and members of the Grievance Commission, Bar Counsel, the staff and members of the Board, and any justice of the Court. No person shall publicly disclose the identity of another individual whose conduct was the subject of an advisory opinion without the consent of that individual.

RULE 12. CONTINUING LEGAL EDUCATION

(a) Continuing Legal Education Requirement.

(1) Except as otherwise provided in this subdivision, every attorney required to register in accordance with these rules of this state shall complete 11 credit hours of approved continuing legal education in each calendar year beginning January 1, 2001. At least one credit hour in each calendar year shall be primarily concerned with issues of ethics or professional responsibility. If an attorney is subject to this rule for more than 3 months of a calendar year but for less than the entire year, the number of

credits required for that year shall be prorated according to the number of full months of the year in which the attorney is subject to this rule. However, an attorney who has registered in emeritus attorney status is required to complete only seven credit hours of approved continuing legal education in each calendar year beginning January 1, 2005, unless exempted from the requirements of continuing legal education as provided by Maine Bar Rule 12(a)(5)(F).

(2) An attorney who completes more than 11 credit hours in a calendar year may carry forward up to 10 such additional hours to satisfy the requirement of the following year, provided that the ethics or professional responsibility requirement of paragraph (1) of this subdivision is satisfied for each calendar year.

(3) The requirement of paragraph (1) of this subdivision may be met only by teaching (as provided in subsection (8)), attending courses or completing any continuing legal education activity entitled to credit as provided in subdivisions (d) and (e) of this rule; provided that no more than one half of the credit hours required in any reporting period may be earned through in-office courses, self-study, or a combination thereof.

(4) An attorney subject to this rule who is a member of the bar of another state which has a mandatory CLE requirement, and who is regularly engaged in the practice of law in that state, satisfies the requirement of paragraph (1) of this subdivision if the attorney is in compliance with a continuing legal education requirement established by court rule or statute in that state. If the other state does not require the equivalent of at least one credit hour per year in ethics or professional responsibility, the attorney must complete at least one approved credit hour in ethics or professional responsibility in each calendar year. An attorney subject to this rule who is a member of the bar of another state must meet the requirement of paragraph (1) of this subdivision if continuing legal education is not mandated by court rule or statute in the other state.

(5) The following individuals otherwise subject to this rule are exempted from its requirements:

(A) Attorneys in inactive status pursuant to Rule 6(c);

(B) Full-time judges in any state or federal jurisdiction;

(C) Full-time teachers in any law school approved by the American Bar Association;

(D) Members of the armed forces of the United States who are on active duty outside the State of Maine;

(E) Residents of another country unless they are practicing law in Maine;

(F) Attorneys who have practiced 40 years or more, attained the age of 65 years, and are engaged in less than the full-time practice of law;

(G) In the discretion of the Board, any individual may be exempted from all or part of the requirements of this rule upon a showing of hardship, disability or for other good cause.

(H) Legislators and members of Congress.

(I) Attorneys serving as judicial law clerks.

(6) An attorney subject to this rule will be exempted from the requirements of paragraph (1) of this subdivision during the year in which the attorney is admitted to the bar of this state and during the following calendar year, if during the year of admission the attorney completes the Bridging the Gap program or other practical skills course approved as provided in subdivisions (d) and (e) of this rule.

(7) Except as provided in paragraphs (8) and (9) of this subdivision, credit is earned for the time of actual participation in an approved course or activity.

(8) An attorney subject to this rule who makes a presentation in an approved course or activity not offered for academic credit by the sponsoring institution will earn two credit hours for every 30 minutes of actual presentation if the attorney has prepared substantial written materials to accompany the presentation. If substantial written materials have not been prepared, the attorney will earn one credit hour for every 30 minutes of actual presentation. An attorney who teaches a regularly scheduled law-related course offered for academic credit at an accredited post secondary educational institution will earn six credit hours under this rule for every hour of academic credit awarded by the institution for the course. An attorney who assists or participates in such a regularly scheduled course will earn one credit hour for every hour of actual participation, up to a maximum of six hours.

(9) An attorney subject to this rule who formally takes for credit or officially audits a regularly scheduled course offered for academic credit at a law school approved by the American Bar Association will earn four credit hours under this rule for every hour of academic credit awarded by the institution for the course, provided that the attorney attends at least 75% of the classes in the course and, if enrolled for academic credit, receives a passing grade.

(b) Reporting Continuing Legal Education Credit.

(1) An attorney subject to this rule shall annually in connection with the filing of the registration statement required by Rule 6(a), sign and submit the Annual Report to the Board providing the course title, date, location, sponsor, and number of credit hours of all courses or other activities taken for credit pursuant to subdivision (a) of this rule during the preceding calendar year, or carried over from a prior year as provided in paragraph (2) of subdivision (a). If a reported course or other activity has not previously been approved in accordance with subdivisions (d) and (e) of this rule, the attorney shall also submit the information required under subdivision (e) to support a request for such approval. An attorney claiming exemption in accordance with paragraphs (4)-(6) of subdivision (a) of this rule shall state the ground of exemption in lieu of reporting the foregoing information.

(2) The Board may at any time ask an attorney to provide documentation supporting any information reported in accordance with paragraph (1) of this subdivision.

(c) Sanctions and Appeal.

Any attorney subject to the requirements of this rule who fails to sign and submit the Annual Report Statement demonstrating compliance with, or exemption from, those requirements by August 31 is automatically suspended. Notice of the suspension shall be given by the Board by registered or certified mail, return receipt requested addressed to the office or home address last known to the Board. Such suspension for failure to comply with this rule shall not be effective until thirty (30) days after the date of mailing the notice thereof. The failure to file shall not be considered a violation of the Code of Professional Responsibility per se, and the suspension for failure to file shall not constitute the imposition of discipline. An attorney who, after the date of the mailing of such notice of suspension but before the effective date of such suspension, reports compliance with this rule, takes steps satisfactory to the Board to meet the requirements of the rule for the year in question

or applies for a waiver on the basis of hardship, disability or for other good cause shall not be suspended for failure to comply with this rule; otherwise the attorney shall be subject to Maine Bar Rules 7.3(i)(2) and (j). An attorney aggrieved as a result of a suspension under this paragraph may apply to the Board Chair for summary relief for good cause shown.

(d) Reinstatement Fees.

An attorney suspended under provisions of subdivision (c) of this rule shall, prior to reinstatement, demonstrate compliance with or exception from the requirements of M. Bar R. 12. The suspended attorney shall pay, in addition to the $25.00 late fee imposed by Rule 6(a)(1), a reinstatement fee of $125.00 unless excused from such reinstatement fee by the Board as a result of its determination that to impose the fee would result in a grave injustice under the circumstances. An attorney who has been suspended within the previous five (5) years for non-compliance with M. Bar R. 12, shall be assessed an additional $50.00 reinstatement fee.

(e) Courses and Other Activities Entitled to Credit.

(1) All publicly available courses or other publicly available continuing legal education activities offered by the following sponsors are deemed automatically approved and entitled to credit upon payment of the requisite fees for purposes of subdivision (a) of this rule: any national, state or county bar association, American Trial Lawyers' Association; Maine Prosecutors' Association; Maine Association of Criminal Defense Lawyers; Maine Trial Lawyers Association; Maine or American Civil Liberties Union; National Association of Attorneys General; National Legal Aid and Defenders' Association; Practicing Law Institute; Probate Judges Assembly; governmental units or agencies; public bar admission, bar registration or discipline, continuing legal education, or similar agencies created by court rule or statute in any state; law schools approved by the American Bar Association; providers affiliated with such an association, agency, or law school; or other organizations approved by the Board.

(2) All courses or other continuing legal education activities sponsored or presented by any other individual or organization are entitled to credit for purposes of subdivision (a) of this rule if the sponsor or the individual course or activity has been approved by the Board in accordance with subdivision (e) of this rule.

(3) The Board may delegate all approval and other functions under this subdivision and subdivision (e) of this rule to Bar Counsel. The Board shall, by regulation, provide for Board review of any decision of Bar Counsel denying approval of any sponsor, individual course, or other continuing legal education activity. The Board's determination of any such issue shall be final.

(f) Approval Procedure.

(1) *Sponsor Approval*. A sponsor may be approved by the Board upon payment of the requisite fees and submission of evidence establishing to the satisfaction of the Board:

(A) That the sponsor has been approved or accredited by a continuing legal education accrediting authority established by court rule or statute in another state; or

(B) That, during the immediately preceding three years, the sponsor has sponsored at least six separate courses that comply with the requirements for individual course approval under paragraph (2) of this subdivision.

Approval granted pursuant to this paragraph must be renewed every three years by submission of the evidence required in subparagraph (A) or (B). The Board may at any time review the status of a sponsor approved under subparagraph (A) or specific courses offered by a sponsor approved under subparagraph (B) and may revoke approval if the status has changed or the courses offered by the sponsor do not comply with the requirements of paragraph (2) of this subdivision. Requests for approval may be submitted using the Application form contained in the Appendix to these Rules, supplemented by such supporting information as would assist the Board in determining whether the sponsor meets the requirements of this Rule.

(2) *Individual Course Approval*. The Board may approve individual courses for credit under subdivision (a) of this rule upon written application from a non-approved sponsor or the submission of supporting documentation from an approved sponsor, together with the requisite fee. An approved sponsor or a non-approved sponsor that seeks approval of a course must file a request for approval accompanied by a full description of the course with the Board at least 30 days before the course is to be presented.

An attendee may file such a request together with the requisite fee at any time up to and including the filing of the annual report under subdivision (b) of this rule for the

year for which credit is sought for the course. The Board shall grant the request if the Board is satisfied that the course meets the following criteria:

(A) The course or activity must contribute directly to the professional competence or skills of attorneys, or to their education with respect to their professional or ethical obligations and, where possible, should include an ethics or professional responsibility component.

(B) Course leaders or lecturers and the authors of written materials must be persons sufficiently competent to accomplish the educational goals of the course.

The Board may, prior to granting approval, request any approved sponsor, non-approved sponsor, or attendee to submit further information concerning a course, including the brochure describing the course, a description of the method or manner of presentation of course materials, a statement as to the actual date and place of presentation and the number of persons in attendance, and a copy of the course materials.

(3) *In-office and Self-study Continuing Legal Education*. Courses offered by law firms, either individually or jointly with other law firms, by corporate legal departments, or by similar entities which employ attorneys, if such courses are provided primarily for the education of the sponsor's members or employees, and group or individual self-study courses involving the use of written materials, audio or video tapes, computers, or other teaching methods and materials may be approved for credit under subdivision (a) of this rule upon submission of evidence establishing to the satisfaction of the Board that:

(A) The course complies with the standards set forth in paragraph (2) of this subdivision;

(B) Experienced lawyers will contribute to the development or teaching of the course;

(C) The course or self-study will be scheduled at a time and location that will be free of interruption.

Information describing the course, activity or program and a request for approval shall be filed by the offering firm or other entity, by an individual attendee or by any other individual seeking approval within the time limits provided in paragraph (2) of

this subdivision. Requests for approval may be submitted using the Application form contained in the Appendix to these Rules, supplemented by such supporting information as would assist the Board in determining whether the course, activity or program meets the requirements of this Rule. If a course or a program of self-study consists of listening to or watching the electronic replay of a previously presented continuing legal education program, the Board shall allocate credit hours to the course in the same manner as for a live program. For other courses or self-study activities, the Board shall determine the amount of credit hours on the basis of program content and the likely duration of the activity.